
(1980) 03 MP CK 0012
In the Madhya Pradesh High Court
Case No : Civil Revision No. 213 of 1980

Nandkishore

APPELLANT

Vs

Sau. Inderabai Holkar

RESPONDENT

Date of Decision : 13-03-1980

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 45 Rule 15

Citation : AIR 1981 MP 21 : (1980) JLJ 701 : (1981) 26 MPLJ 365

Hon'ble Judges : G.L. Oza, J

Bench : Single Bench

Advocate : S.R. Joshi, for the Appellant; S.N. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

G.L. Oza, J.

This revision petition has been filed by the petitioner against an order passed by Civil Judge, Class II, Indore, in Civil Execution Case No. 198A of 1965.

The facts necessary for disposal of this revision petition are that the non-applicant decree-holder obtained a decree for eviction against the petitioner-judgment-debtor. The execution of this decree was pending in the court below. The execution was stayed on account of appeal to this Court and after the appeal in this Court was disposed of and the decree was maintained, a SLP was preferred before Hon"ble the Supreme Court of India and the Supreme Court by its order dated 8-12-1976 dismissed the leave petition and passed the following order.

"Special leave petition is rejected but the decree for eviction passed against the petitioner will not be executed up to 31st December, 1978 on condition that the petitioner will pay to the respondents the monthly rent regularly from month to month on or before the 30th day of next succeeding month."

By this order the SLP was thus rejected but it was directed that the decree for

eviction shall not be executed up to 31st December, 1978, The execution petition which was pending before the court below therefore was stayed up to 31st December. 1978 and when thereafter the execution further proceeded an objection was filed by the petitioner raising a plea that under Order 45, Rule 15 of the CPC a decree or a final order passed by the Supreme Court could only be executed in the manner provided for in Order 45, Rule 15 of the Code. The learned Court below rejected this objection and against this order the present revision petition has been filed.

Learned counsel for the petitioner contended that the order passed by the Supreme Court is a final order and the orders passed by the subordinate courts merged into that order and within the meaning of the language of Order 45, Rule 15 of the Code the execution of this order could only be done by following the procedure prescribed in Order 45, Rule 15 of the Code. In support of his contention learned counsel placed reliance on a Division Bench decision of this Court noted in *Madarsa Hakimia etc. V. Mulla Ali Bhai* 1964 MPLJ 205, and *Birendra Bikram Singh T. Basdeo* AIR 1936 Oudh 185 and *Abdur Rasheed Vs. Maharaja Srish Chandra*, .

Learned counsel for the non-applicant, on the other hand, contended that the order passed by their Lordships of the Supreme Court clearly shows that the decree passed by the courts below was maintained as the SLP was rejected. But what their Lordships further ordered was that the decree shall not be executed up to a particular date. This, according to learned counsel, does not amount to any modification of the decree passed by the lower court and maintained by this Court. It was also contended that what was being executed in the Court below is not this order of the Supreme Court but the decree which has been maintained by the High Court and thus it was not necessary for the non-applicant to follow the procedure prescribed in Order 45, Rule 15 of the Code. Alternatively, the non-applicant also submitted an application in this Court, along with the certified copy of the order passed by their Lordships of the Supreme Court making a prayer that the decree be executed.

It is not in dispute that the decree for eviction was maintained by this Court and a SLP was preferred before their Lordships of the Supreme Court. The operative part of the order of their Lordships of the Supreme Court quoted above clearly goes to show that the SLP was rejected, which clearly means that the decree passed and maintained by this Court is further maintained. What is further ordered makes the position clear. It has been further observed that "the decree for eviction passed against the petitioner will not be executed up to 31st December, 1978. This therefore does not amount to any modification of the decree but it only puts a rider on the execution thereof. In my opinion, therefore, it could not be said that while passing this order their Lordships of the Supreme Court in any manner . modified the decree for eviction passed against the petitioner.

The decision noted in 1964 MPLJ 2(15 (supra) only lays down that the provisions

contained in Order 45, Rule 15 of the CPC are mandatory. That question does not arise before me. In AIR 1936 Oudh 185 (supra) admittedly, the execution was of the decree of the Privy Council and their Lordships therefore applied Order 45, Rule 15 of the Code. In *Abdur Rasheed Vs. Maharaja Srish Chandra*, the execution pertained to costs and the question arose about the cost of the SLP and in that context it was observed that the costs of the SLP are not awarded in exercise of ordinary jurisdiction of the High Court and therefore it was held that the executing Court could not execute that decree. In the present case, no such contingency arises. It is also significant that none of the parties to the order passed by the Supreme Court quoted above, want to execute that order. What is sought to be executed is the decree passed by the trial Court which has been maintained by the High Court and the SLP against the judgment of this Court has been rejected

The scheme of Order 45 of the CPC shows that it provides for appeals to the Supreme Court. Rule 1 of this Order defines the term "decree" and Rule 2 talks of application for leave. Rule 6 talks of refusal of the certificate and Rule 7 provides for security and deposit required on grant of certificate. And after a certificate is granted and Rule 7 is complied with, Rule 8 provides for admission of the appeal. Rule 15 comes thereafter which talks of execution of any decree or order of the Supreme Court. The scheme of Order 45 therefore discloses that the order or decree which is talked of in Rule 15 thereof is an order or decree passed by the Supreme Court after the leave is granted and appeal is admitted and that is what is clear from the definition of "decree" as provided in Rule 1 :--

"Rule 1. In this Order, unless there is something repugnant in the subject or context, the expression "decree" shall include a final order."

This clearly indicates that it shall include a final order. It is not in dispute in the present case that the leave petition itself has been rejected.

Thus, it could not be contended that what is "being executed is any decree or final order passed by their Lordships of the Supreme Court and therefore in my opinion the provisions contained in Order 45, Rule 15 of the CPC in terms do not apply in this case,

The revision petition is therefore without any substance. It is accordingly dismissed. The non-applicant shall be entitled to costs of this revision petition. Counsel fee as per schedule, if certified.