
(2007) 10 AHC CK 0059
In the Allahabad High Court

Narottam son Chunnu Lal

APPELLANT

Vs

Ganapati Sahakari Avas Samiti Limited

RESPONDENT

Date of Decision : 23-10-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47
Specific Relief Act, 1963 — Section 28

Citation : (2008) 1 AWC 7 : (2008) 104 RD 20

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.U. Khan, J.—Heard learned Counsel for the parties on several dates.

2. This writ, petition has been filed by Judgment-Debtor. Petitioner-Judgment-Debtor executed an agreement for sale in favour of respondent on 16.7.1990 agreeing to sell his land admeasuring 0.83 acres @ Rs. 17,000/- per Biswa and received Rs. 10,000/- as earnest money. Thereafter respondent filed Original Suit No. 281 of 1989 against the petitioner for specific performance of the aforesaid agreement for sale. (In between Rs. 80,000/- had been paid as part of sale consideration). The suit was decreed by Civil Judge (Senior Division) Varanasi on 31.7.1998. Against the said judgment and decree appeal was filed by the petitioner but the said appeal was dismissed for non-payment of the court fees. (Naturally there was no question of any stay order in appeal as it was defective). Thereafter plaintiff filed execution in the form of Execution Case No. 43 of 1998, on 6.10.1998.

3. In the operative portion of the decree it was provided as follows:

Defendant is directed that in case plaintiff within two months pays him the entire balance sale consideration then the defendant should execute the sale deed in terms of the Agreement, otherwise plaintiff would be entitled to deposit the balance sale consideration in the Court and get the sale deed executed through

court. Sale deed will be registered only when plaintiff files approval of Competent authority under the Ceiling Act and no objection certificate from Income Tax Department.

4. Copy of the order sheet of Executing Court has been annexed along with supplementary affidavit dated 27.11.2006 filed by the petitioner. In the order sheet of 27.2.1999 it is mentioned that the decree holder should within one-month file no-objection from the Ceiling Officer and shall deposit the remaining amount in Court. Thereafter 12 dates were fixed but the case could not be taken up. Thereafter on 22.12.2000 it was mentioned that the file should be put up on 12.1.2001 and decree holder should comply with the order dated 27.2.1999. Similarly on 12.1.2001 it was directed that the file should be put up on 3.2.2001 and decree holder should comply with the order dated 27.2.1999. Thereafter on 3.2.2001 Judgment-Debtor filed objections u/s 28 of Specific Relief Act read with Section 47 C.P.C., which were directed to be registered as Miscellaneous Case. In the said order it is also mentioned, "Decree holder has moved an application to accepting the tender. Keep it on file. Put up on the date fixed for disposal."

Put up on 2.3.2001 for disposal.

5. Objections of the Judgment Debtor were registered as Miscellaneous Case No. 40 of 2001. Thereafter 20 dates were fixed but the cases could not be taken up. Thereafter on 23.8.2002 execution was dismissed and objections of Judgment Debtor u/s 28 Specific Relief Act were allowed. The said order is Annexure T to the writ petition. In the said order it was noted that till the date of the said order balance sale consideration had not been deposited by the decree holder. It was further directed that Judgment Debtor should return the earnest money within a month. The court while passing the order dated 23.8.2002 placed reliance upon the Supreme Court Authority reported in V.S. Palanichamy Chettiar Firm Vs. C. Alagappan and Another, Thereafter Decree holder filed review petition before the Executing Court. The successor Presiding Officer of the Court concerned allowed the review petition through order dated 7.7.2003 and set aside the order-dated 23.8.2002 passed by his predecessor. Copy of the order on review petition is Annexure "3" to the writ petition. It is interesting to note that even until the date on which review was allowed i.e. 7.7.2003 the balance sale consideration had not been deposited by the Decree holder. In the review order it is mentioned that on 3.2.2001 decree holder had submitted the tender, which was sufficient. Submitting the tender never amounts to payment. In the review order it is also mentioned that learned Counsel for the decree holder stated that the balance consideration had been deposited, however, the said statement was wrong, as on the file there was no such evidence. In para 2 of Review Petition, copy of which is Annexure II to the writ petition, it was falsely stated that balance sale consideration had already been deposited within the time extended by the Court. After deciding the review petition on 7.7.2003 the Executing Court on 29.7.2003 disposed of application of the Decree holder for permission to deposit the money. The application was allowed at decree holder's own risk. The said order is also

included in the copy of the order sheet filed along with supplementary affidavit of the petitioner dated 27.11.2006.

6. Against the order dated 7.7.2003 petitioner Judgment Debtor filed Miscellaneous Civil Appeal No. 105 of 2003. A.D.J. Court No. 7 Varanasi dismissed the appeal on 29.4.2004, hence this writ petition.

7. After the decision of the appellate court the Civil Judge (Senior Division) Varanasi executed the sale deed on 10.10.2005, copy of which is annexure to the supplementary affidavit dated 12.2.2006 filed by the petitioner. In the said sale deed it is mentioned that the balance sale consideration of Rs. 3,60,000/- and odd was deposited by the decree holder in Court on 1.8.2003.

8. Through this writ petition orders dated 7.7.2003 and 29.4.2004 have been challenged.

9. Learned Counsel for the petitioner has argued that firstly there was no ground of review and secondly decree holder neither deposited the balance sale consideration in terms of the decree nor deposited the same within the extended time, hence first order dated 23.8.2002 dismissing the execution application was rightly passed. Learned Counsel for the petitioner apart from placing reliance upon the authority of the Supreme; court relied upon by the executing court in its order dated 23.8.2002 has also placed reliance upon a recent authority of the Supreme Court I reported in Chanda (dead) through LRs. Vs. Rattni and Another, On the other hand, learned Counsel for the respondents has placed reliance upon the authority of the Supreme Court reported in Kumar Dharendra Mullick v. The Holi Park Apartment JT 2004 (9) S.C. 446.

10. In the authority of Kumar Dharendra Mullick the; facts were quite peculiar and the Supreme Court held that decree holder was always assured by the Judgment Debtor of settlement, hence he could neither file execution application nor deposit the amount (balance sale consideration). It was also held that Judgment Debtor himself requested the decree holder not to file execution application.

11. In the instant case the decree was quite clear. In case the Judgment Debtor did not execute the sale deed within two months then decree holder was required to deposit the money in the court. Along with execution application no affidavit was filed stating therein that Judgment Debtor had refused to accept the amount and execute the sale deed. In any case, if Judgment Debtor had refused to accept the amount in terms of the decree, the said amount ought to have been deposited in the Court either in 2 months or at the most along with execution application. It is very strange that even till the date on which review petition was allowed i.e. 7.7.2003 the amount had not been deposited. Accordingly there was absolutely no question of allowing the execution application and rejecting the application of Judgment Debtor u/s 28 of Specific Relief Act and reviewing the order dated 23.8.2002.

12. The argument of the learned Counsel for the respondent is that on 3.2.2001 his application for accepting the tender was not disposed of and was directed to be taken up on the next date fixed, hence it can not be said that the decree holder did not make efforts to deposit the amount. After 3.2.2001 several dates were fixed but on no date decree holder requested for passing of the tender. Even when he filed review petition he did not request for permission to deposit the amount. On the other hand he falsely stated that amount had already been deposited. In any case even though time to make deposit can be extended on sufficient ground, however, at no stage decree holder gave any explanation for condonation of delay in making the deposit. The executing court also did not record any reason for granting permission to the decree holder to deposit the amount after allowing the review petition.

13. Accordingly writ petition is allowed. Orders dated 7.7.2003 and 29.4.2004 are set aside and order dated 23.8.2002 is restored. However, it is directed that Rs. 90,000/- received by the petitioner shall be returned to plaintiff respondent with 8% simple interest. It is needless to add that the sale deed executed by the Civil Judge (Senior Division) Varanasi stands automatically set aside.