
(1959) 08 MP CK 0011
In the Madhya Pradesh High Court
Case No : C. Revi. No. 471 of 1958

Phoolchand Chaturbhuj (Judgment-debtor)	APPELLANT
Vs	
S.L. Modi and Company and another (Decree-holder)	RESPONDENT

Date of Decision : 12-08-1959

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 151

Citation : (1959) MPLJ 993

Hon'ble Judges : H.R. Krishnan, J

Bench : Single Bench

Advocate : M.A. Khan, for the Appellant; Harbansingh, for the Respondent

Final Decision : Dismissed

Judgement

H.R. Krishnan, J.

Though this has been filed as an application in revision it is really an appeal. In a suit before the Civil Judge, the Plaintiff-Appellant had sought and failed to obtain the under Order 39, Rule 1 an order of temporary injunction restraining the Defendant decree-holder from selling up the property of the Plaintiff in an execution was void on account of fraud and collusion between the solicitor formally engaged by the Plaintiff, his agent, and the decree-holder himself.

While the facts relating to the litigation are long and complicated, the immediate questions before us are simple. Firstly, whatever the merits of the Prayer for temporary injunction whether it can be entertained after a third party, namely an auction-purchaser, is already on the scene with the property vesting in him, but for the confirmation of sale which has been stayed by this Court; secondly, on merits also, whether the mere fact that the judgment-debtor brings a suit for declaring the decree void can justify a temporary injunction; thirdly, whether the conduct of the present judgment-debtor would justify its refusal.

The decree-holder is a resident of Calcutta and long ago brought a suit there against the judgment-debtor Appellant who was, and continues to be a resident

of Mandsaur in the erstwhile Gwalior State. However, the latter has accepted the jurisdiction of the Calcutta Court, entered appearance and empowered a solicitor who was conducting the case on his behalf. Accordingly, the suit progressed on contest, and finally ended in a compromise decree, dated 27-11-1941--a decree of a foreign Court as far as the present Appellant was concerned at that time, but one on compromise passed by a Court in which he had entered appearance, and had accepted jurisdiction.

The next relevant incident is an application in execution that was transferred from Calcutta to the Mandsaur Court in 1953. Presumably, meanwhile there were other execution cases at Calcutta, but probably because the Appellant had no property there at that time, nothing came out of them. When the transferred decree was put into execution at this end, the Appellant raised some objections, primarily on the allegation that the foreign decree was not executable even after the commencement of the Indian Constitution: a subject on which, generally speaking, there is considerable uncertainty and conflict of view-points, but only where the erstwhile foreign subject had not accepted the jurisdiction of the Court that passed the decree. Where, as in the present case, he accepts the jurisdiction and enters appearance, there is absolutely no controversy. Still, the Appellant thought fit to pursue that ground out of which as could be expected, nothing came. But by this he stalled the execution till 1955. Nothing more of particular significance happened, and the property of the Appellant was attached in 1958, and proclaimed for sale. Thereupon he filed a suit against the decree-holder one of his own agents working at Calcutta, and the solicitors whom he had briefed in the Calcutta suit which ended in 1941 in a compromise decree. The suit was numbered and summonses went out. It is worth noting that in this Court the Appellant has filed a petition on 29-6-1959 that he was intending to move the trial Court to delete the solicitors from the list of Defendants. That suit is for a declaration that the decree passed by the Calcutta Court in 1941 is null and void because he had empowered the solicitors only for taking certain steps and not entering into a compromise, and that they in collusion with the decree-holder and also a servant of the Appellant whom he has since dismissed, entered into a compromise which was incorporated in a decree. Accordingly, he wanted that decree to be set aside and meanwhile asked for temporary injunction on the decree-holder restraining him from prosecuting the execution case. This was refused after hearing both the parties and the Appellant has come up here.

As matters now stand, the decree is a valid and operative one and the sale in execution is not wrongful. The Appellant's argument, however, is that in the event of his succeeding in the suit, he will not be able to get back the property. In other words, here is the possibility of injury, and the sale, which is lawful now, may become wrongful by the operation of a decree which the Plaintiff hopes to obtain. Accordingly, he prayed for the injunction.

The decree-holder has opposed it on the ground that at this rate the execution of any decree can be stopped literally till to ends of time. The judgment-debtor, as

the present judgment-debtor has been doing, can evade the execution on this or that pretext, and having taken years in that process, may finally file a suit. If the suit fails, he would, in the event of the temporary injunction, have gained time, and may conceivably repeat the process by bringing fresh suits. He has urged that there is no justification for this Court varying the effect of the considered exercise of discretion by the lower Court.

This appeal was filed on 28-10-1958. On 1-11-1958 the property was sold, the one-fourth purchase money paid immediately, and the balance being deposited apparently on 22-11-1958. The auction-purchaser has sought leave to be impleaded here and has urged that in the present context no temporary injunction should be passed for the very simple reason that it would be an order to his serious inconvenience and he, at any rate, has not been a party to the litigation. This has been opposed by the Appellant on the ground that the auction-purchaser has no locus standi, because the sale itself has ceased to exist in the eyes of law, as the purchaser had deposited the three-quarters balance of the bid amount a few days beyond the 15 days period allowed by Order 21, Rule 85.

It is not necessary in this proceeding to say anything about this alleged delay in the deposit of the balance of the bid amount beyond the 15 days period. If this plea is taken before the trial Court, it would be proper for it to consider the effect of the ruling of the Supreme Court reported in *Manilal Mohanlal Shah and Others Vs. Sardar Sayed Ahmed Sayed Mahamad and Another*, In view of this new controversy, I do not propose to consider in this proceeding the reasons urged by the auction-purchaser why the temporary injunction may not be granted. I would, therefore, restrict my attention to the argument of the Appellant on one hand and the decree-holder on the other. No attempt is therefore made to answer the first question posed in para. 2 above.

The judgment-debtor has relied upon the case reported in *Firm Kedar Nath Babu Lal Vs. Prabhu Narayan Sahu and Others*, In that, case, the lower Court had granted temporary injunction, the High Court was not prepared to hold that the discretion had not been exercised judicially. Naturally the High Courts in general are reluctant to interfere with the exercise of discretion by the subordinate Courts. No doubt, it was also a case where the judgment-debtor wanted to have the execution proceedings stalled because he had brought a suit for a declaration that the decree had been obtained by fraudulent suppression of summons and plaint. The subordinate Court examined the plaint itself and found that there was a prima facie case and therefore it granted the temporary injunction for maintaining the status quo. Another point to note is that the judgment-debtor there filed his suit immediately after the execution case was started. In the present instance, the suit has been filed 17 years after the passing of the compromise decree (1941) and five years after it was transferred to Mandsaur (1953) and two years (1955) after the judgment-debtor found that another objection he raised could not be sustained. The Patna suit was a straight-forward one pleading fraudulent suppression of summons and plaint. But the present one

is supposed to be against the solicitors empowered, for having acted collusively in filing the compromise petition, by a client who pretends to have remained for 12 years in blank ignorance of what happened in that suit. There are other points of difference with the Patna case, but it is unnecessary to go into them in the interest of the Appellant himself who is presumably keen on fighting his suit, though he has expressed a desire in writing, that he wants to drop the solicitors, who are supposed to have exceeded their power and played a trick. Even supposing that this Court would have refused to intervene in the event of the subordinate Court granting injunction in a case similar to the Patna one, it does not follow that it would differ from the subordinate Court in a case of this nature where the judgment debtor's suit is definitely far-fetched, over delayed, and has all the appearance of a mere device. It may be inconvenient for the judgment-debtor to have the nature of the suit examined here but he has raised it and invited this Court's scrutiny. Still, I may point out, that in the event of the judgment-debtor pursuing the suit, the trial Court should consider it independently of those remarks which are made for the limited purpose of the present proceedings.

As against the principle, the judgment-debtor Appellant seeks to derive from the Patna case, we have the following rulings of Madhya Bharat: Ramnarain v. Shri Krishna AIR 1957 MB 75 and Bernard Kumar v. Ayodhya Prasad AIR 1956 MB 95, the latter being a ruling of a Division Bench upholding the principles contained in the earlier single Bench decision:

No order of injunction can be made under Order 39, Rule 1 or 2 or u/s 151, CPC to restrain a decree-holder from executing a decree in his favour so long as it stands. Merely because the Plaintiff instituted a suit for a declaration that the decree is not binding on him and that he hopes to succeed in the suit, it cannot be held that the execution of a decree would amount to committing of an injury.

Similarly in Anssetti Venkanna alias Venkateswara Rao v. Rimalpudi Venkata Rao AIR 1957 And P. 453, it was laid down that

""Cause injury or loss to the Plaintiff" does not cover a case of decree-holder executing a decree." "... It can, therefore have relation only to acts of a party which are wrongful and not to legitimate acts of persons who pursue the remedies allowed to them by law."

In considering whether the sale is going to be legitimate or wrongful, and therefore one calling for a temporary injunction or not, we have normally to give attention to matters as they stand. The mere fact that the person affected files a plaint that the decree may be declared inoperative against him and that he is optimistic, is irrelevant in this regard. Conceivably, one can have a case where there are very strong indications that the decree may be declared inoperative and the suit by the judgment-debtor is not a device but one that may succeed. The Patna High Court has refused to interfere when a subordinate Court acted on this supposition in a case where the judgment-debtor Plaintiff was apparently on

very strong ground. Such a case may be exceptional. In any event, the present one is not of that type.

A very serious objection to granting temporary injunction in such circumstance is that a judgment-debtor may by this device, literally stall the execution proceedings till doomsday. Every time he fails in his objections he can having already gained a few years, file a suit, get the execution stayed on the strength of a temporary injunction, and even if that fails, try again. Things are difficult enough under our law for a decree-holder trying to reap the legitimate fruits of his success in the law Courts, and it is a relief to find that this method of keeping him out for ages is not approved even by our law.

The result is that the appeal is dismissed with costs and pleader's fee according to rules payable by the Appellant to the decree-holder-Respondent.

No costs to the auction-purchaser.