

(2018) 03 CHH CK 0216
In the Chhattisgarh High Court
Case No : W.P.(227) No. 954 of 2017

PRABHU DAYAL KESHARWANI

APPELLANT

Vs

GOVIND RAM SAHU

RESPONDENT

Date of Decision : 21-03-2018

Acts Referred:

Code of Civil Procedure, 1908 — Section 51, Section 74, Order 21 Rule 97, Order 21 Rule 35

Citation : (2018) 03 CHH CK 0216

Hon'ble Judges : GOUTAM BHADURI

Bench : Single Bench

Advocate : V.K. Pandey, Astha Shukla

Final Decision : Allowed

Judgement

Heard.

1. Instant petition is against the order dated 29/11/2017 passed by the Civil Judge, Class-I, Kasdol, District Balouda Bazaar-Bhatapara in Civil Suit

No.242-A/2002 whereby application preferred by the petitioner decree holder for execution of judgement and decree for possession of the property

was dismissed on the ground that no amount has been deposited by the decree holder to obtain police help.

2. Learned counsel for the petitioners submits that such finding is apparently wrong on the face of the record as amount was already deposited long

back on 1/05/2014 which would be evident from the order sheet dated 6/05/2014. He further submits that though decree is of 2003 yet after 15 years

have passed, fruits of the decree has not been materialized. Consequently, order of the executing court dated 29/11/2017 be set aside and decree of

the possession of the suit property may be executed forthwith.

3. Perused the record. Record would show that in Civil Suit No. 242A/2002 a decree was passed on 31/10/2003. Decree was for possession of part of land bearing Khasra No. 961, admeasuring 0.016 hectare situated at Hansua, Tehsil Kasdol, District Raipur which was demarcated and was shown in the decree and the map was made part of the decree. After filing of such execution notice were issued by the executing court i.e. Civil Judge, Class-II, Baloda-Bazar. Record would show that judgement debtor was served on 6/01/2010 and sought time to file reply and from time to time the execution case was adjourned. Eventually after hearing the parties the executing court by an order dated 28/04/2010 passed the order to hand over the vacant possession of the land in question and the possession warrant was issued. Thereafter, notice to obtain possession notice for warrant was paid but eventually decree for possession could not be executed. On many dates though the possession warrant was issued but it came unserved.

4. The order sheet dated 12/03/2012 would show that possession of the land could not be given for the reason that a house exist over such plot. Thereafter, execution case again adjourned from time to time and on 13/09/2012 the executing court observed that since over the land in question superstructure has been raised, therefore by demolition of the superstructure possession warrant to be executed. It was further ordered that the decree holder shall pay the cost of demolition of the superstructure. Again the execution case adjourned to different dates and the order sheet dated 14/02/2013 shows that notice though were issued to the judgement debtor but he refused to accept the same. Consequently, as per the earlier order dated 13/09/2012 executing court observed that the possession of the land be handed over after demolition of the house and the case was fixed for report of the possession warrant.

5. The order of the executing court would show that on different dates case was adjourned and in the meanwhile possession warrant returned with endorsement that since judgement debtor and others started resisting execution of the warrant, therefore police help was ordered for. In the meanwhile, order sheet dated 6/05/2014 records the fact that decree holder had deposited the amount to be incurred i.e. expenses to obtain police help. Annexure P-5 is the receipt dated 1/05/2014 filed alongwith petition would show that amount of Rs.10,408/- was deposited in respect of the Civil

Suit No.242-A/2002 to obtain services of the police to execute the decree. Thereafter too Executing court on the different dates recorded that by

demolition of the superstructure, possession of the suit land be handed over to the decree holder.

6. Order sheet dated 3/12/2015 reflects that an application was filed by the decree holder that because of the inaction of the police, the possession

warrant could not be executed which was meant to be executed on 6/01/2015 and 7/01/2015, therefore part of the amount of Rs.5204/- may be

adjusted in the other civil suit which is pending execution case bearing No. 55-A/2002. The said application on behalf of the decree holder would show

his helplessness to get the aid of the Court, wherein despite the deposit of the amount to get the police help, the same was not adequately provided to

execute possession decree. On such application the executing court observed that since deposit was made in the Civil Suit No.242-A/2002, therefore

such deposit cannot be adjusted meaning thereby it was lamented and fortified that amount of Rs.10,408/- was deposited in the executing court to

obtain police help. Order sheet would show that days rolled by but eventually decree remained unexecuted. Executing court time and again on the

different order sheet repeated the fact that possession of the vacant land be handed over to the decree holder but the fact as would suggest that it only

continued in the order sheet instead of actual happening.

7. Order-sheet dated 20.01.2017 shows that an application was filed by the decree holder/petitioner herein under Order 21 Rule 97 read with Section

74 CPC. It was contended that though the decree was put for execution but the same was resisted by the judgment debtor as such the vacant

possession of the property could not be obtained and since resistance has been offered, therefore, the judgment debtor may be taken into custody.

Therefore, the provisions of Section 74 CPC may be proceeded. Section 74 of the CPC provides that in case of resistance made by the judgment

debtor, the person who resists the same may be detained in the civil prison and the decree holder may be put to the possession of the property. The

said application was dismissed by the executing Court on an undertaking given by the judgment debtor that he is not resisting the execution of the

decree and he has left possession of the property and after demarcation of the land if the possession of the judgment debtor is found then he himself

would remove his possession from the property. On such submission the application under Order 21 Rule 97 read with Section 74 CPC was dismissed.

8. Different order sheet on the different dates continued and reading of the order sheet which was of the intermediate period and in the further order

sheet court repeated the fact that possession may be handed over in respect of the suit property. Order sheet also reflects that in between such period

certain objection was raised by the judgement debtor questioning identity of the property and order sheet of 25/10/2017 shows that when the Revenue

Inspector and Patwari reached to the spot along with the decree holder threat was extended to cause personal assaults to the decree holder therefore

the demarcation could not be carried out.

Thereby court under such circumstances repeated the order and directed for demolition of the house which is situated over suit property and give

possession of the land.

9. Order sheet dated 14/11/2017 again would show that while decree was being put to execution the wife of the judgment debtor extended threat to

immolate herself, therefore decree again remained un-executed and came back. Lastly the executing court dismissed the execution by holding that

since the decree holder is not ready and willing to bear the expenses to be incurred for police help, execution was dismissed.

10. Perusal of the entire order-sheet in entirety would show that the decree was passed in the year 2003 and the same is unexecuted till date. The

executing Court lastly dismissed the execution by holding that the decree holder is not ready and willing to incur the expenses which is required to get

a police help. Earlier order-sheet in the executing Court and the receipts would show that the decree holder had already deposited an amount of

Rs.10,408/- on 01.05.2014, the executing Court on the wrong finding of fact dismissed the execution.

11. In the facts of this case, Order 21 Rule 35 CPC, which touches upon the decree of immovable property and Section 51 CPC which describes

power of the executing Court to enforce the execution read with Section 74 CPC which deals with the procedure when the resistance is offered in

execution of the decree, would be relevant in this case which reads as under:-

Order 21 Rule 35. Decree for immovable property.- (1) Where a decree is for the delivery of any immovable property, possession thereof shall be

delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by

removing any person bound by the decree who refuses to vacate the property.

(2) Where a decree is for the joint possession of immovable property, such possession shall be delivered by affixing a copy of the warrant in some

conspicuous place on the property and proclaiming by beat of drum, or other customary mode, at some convenient place, the substance of the decree.

(3) Where possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free

access, the court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs

of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree holder in

possession.

Section 51. Powers of court to enforce execution.- Subject to such conditions and limitations as may be prescribed, the court may, on the application

of the decree holder, order execution of the decreeâ?" (a) by delivery of any property specifically decreed;

(b) by attachment and sale or by sale without attachment of any property;

(c) by arrest and detention in prison for such period not exceeding the period specified in section 58, where arrest and detention is permissible under

that section;

(d) by appointing a receiver; or

(e) in such other manner as the nature of the relief granted may require:

Provided that, where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment

debtor an opportunity of showing cause why he should not be committed to prison, the court, for reasons recorded in writing, is satisfiedâ?

(a) that the judgment debtor, with the object or effect of obstructing or delaying the execution of the decree,â?

(i) is likely to abscond or leave the local limits of the jurisdiction of the Court, or

(ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or

committed any other act of bad faith in relation to his property, or

(b) that the judgment debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof

and refuses or neglects or has refused or neglected to pay the same, or

(c) that the decree is for a sum for which the judgment debtor was bound in a fiduciary capacity to account.

74. Resistance to execution.- Where the Court is satisfied that the holder of a decree for the possession of immovable property or that the purchaser of

immovable property sold in execution of a decree has been resisted or obstructed in obtaining possession of the property by the judgment debtor or

some person on his behalf and that such resistance or obstruction was without any just cause, the Court may, at the instance of the decree-holder or

purchaser, order the judgment-debtor or such other person to be detained in the civil prison for a term which may extend to thirty days and may

further direct that the decree-holder or purchaser be put into possession of the property.â??

12. Reading of the aforesaid provision would show that the executing Court has all the power to deliver the possession of the decree by removing any

person bound by the decree who refuses to vacate the property. Section 51 speaks about the powers of Court to enforcement which also includes that

the decree may be executed by the arrest and detention in prison and Section 74 specifically speaks about when the resistance is offered, the person

who resists may be detained in the civil prison.

13. Rule 232 of High Court Rules â?" C.G. Civil Court Rules relating to Civil Procedure Code, purports that decree holder may seek for police help by

payment of money. The rules stresses upon that Court can help when it is convinced on the existence of grave emergency. In this case, the executing

Court already considering the facts had ordered for grant of police help to execute the decree. In any case, the C.G. Civil Court Rules will not

override the provisions of CPC wherein the plenary powers have been given to the Court to execute the decree and to enforce the same with order to

power to arrest. In such case those powers conferred by C.P.C. cannot be curtailed to have dependency of police alone. The Courts cannot be

presumed to be in symbolic collapse state.

14. In the instant case, decree of possession was of the year 2003, the execution case was preferred in the month of September, 2007 and the delivery

of possession still hangs in uncertainty. It appears that the real struggle of the decree holder started after the decree was put for execution. The kind

of resistance as is reflected that even personal threat to cause hurt to a decree holder and fear atmosphere was created by judgment debtor by

extending threat of immolating herself, which leads to form an opinion that the decree-holder was inundated with resistance and fear and perceived

threat along the line of holding status quo.

15. In the like situation, the Supreme Court in the matter of Narayan Dutt Tiwari Vs. Rohit Shekhar and Another {(2012) 12 SCC 554} has held thus

in paras 23, 24 & 44, which are quoted as under:-

“23. The House of Lords, in Attorney General V. Guardian Newspapers Ltd. observed that public interest requires that we have a legal system

and courts which command public respect and if the courts were to make orders manifestly incapable of achieving their avowed purpose, law would

indeed be an ass. It was further held that the court should not make orders which would be ineffective to achieve what they set out to do.

24. The Supreme Court also, in K.A. Ansari v. Indian Airlines Ltd. has held that : (SCC p.170, para 20)

“20.....Difficulty in implementation of an order passed by the court, howsoever grave its effect may be, is no answer for its non-

implementation.”

44. A Division Bench of the Madras High Court in Sri-la-Sri Sivasubramanyananda Swami v. Sri-la-Sri Arunachalasamy Chidambaram had the

occasion to examine whether the civil courts can issue directions to the police officials for execution and implementation of the orders of the civil

court. Relying on Jaipur Mineral Development Syndicate v. CIT it was held that the civil courts in exercise of their inherent power and in the absence

of any express or implied prohibition are entitled to pass orders as may be necessary to prevent abuse of the process of the court and to avoid gross

miscarriage of justice. It was accordingly held that a litigant who has secured an order from the court is entitled to full benefit thereof and the court is

entitled to resort to law enforcement machinery to see that its orders are obeyed. It was further held that no technicality can prevent the court from

doing justice in exercise of its inherent powers. To the same effect is the judgment of the Karnataka High Court in Karisiddamma v. Sanna

Kenchamma.â??

16. The Supreme Court in Satyawati Vs. Rajinder Sing and Another {(2013) 9 SCC 491} while dealing the appeal for execution deprecated the

unreasonable delay for the reason that the decree-holder if is unable to enjoy the fruits, the entire effort of successful litigant would be in vain. The

Supreme Court has thus observed as under in para 12 to 17, which reads as under:-

â??12.It is really agonizing to learn that the appellant- decree- holder is unable to enjoy the fruits of her success even today i.e. in 2013 though the

appellant- plaintiff had finally succeeded in January, 1996. As stated hereinabove, the Privy Council in the case of The General Manager of the Raj

Durbhunga vs. Coomar Ramaput Sing had observed that the difficulties of a litigant in India begin when he has obtained a Decree. Even in 1925, while

quoting the aforesaid judgment of the Privy Council in Kuer Jang Bahadur vs. Bank of Upper India Ltd., the Court was constrained to observe that:

â??Courts in India have to be careful to see that process of the Court and law of procedure are not abused by the judgment-debtors in such a way as

to make Courts of law instrumental in defrauding creditors, who have obtained decrees in accordance with their rights.â??

13. In spite of the aforesaid observation made in 1925, this Court was again constrained to observe in Babu Lal vs. Hazari Lal Kishori Lal in para 29

that:

Â â??29. Procedure is meant to advance the cause of justice and not to retard it. The difficulty of the decree holder starts in getting possession in

pursuance of the decree obtained by him. The judgment debtor tries to thwart the execution by all possible objectionsâ??

14.This Court, again in Marshall Sons & Co. (I) Ltd. vs. Sahi Oretrans (P) Ltd. was constrained to observe in para 4 of the said judgment that:

Â â??4â?|..it appears to us, prima facie, that a decree in favour of the appellant is not being executed for some reason or the other, we do not think it

proper at this stage to direct the respondent to deliver the possession to the appellant since the suit filed by the respondent is still pending. It is true that

proceedings are dragged for a long time on one count or the other and on occasion, become highly technical accompanied by unending prolixity at

every stage providing a legal trap to the unwary. Because of the delay,

unscrupulous parties to the proceedings take undue advantage and person who is in wrongful possession draws delight in delay in disposal of the cases by taking undue advantage of procedural complications. It is also a known fact that after obtaining a decree for possession of immovable property, its execution takes a long time??

15. Once again in Shub Karan Bubna vs. Sita Saran Bubna at para 27 this Court observed as under :

?? 27. In the present system, when preliminary decree for partition is passed, there is no guarantee that the plaintiff will see the fruits of the decree.

The proverbial observation by the Privy Council is that the difficulties of a litigant begin when he obtains a decree. It is necessary to remember that

success in a suit means nothing to a party unless he gets the relief. Therefore, to be really meaningful and efficient, the scheme of the Code should

enable a party not only to get a decree quickly, but also to get the relief quickly. This requires a conceptual change regarding civil litigation, so that the

emphasis is not only on disposal of suits, but also on securing relief to the litigant.??

16. As stated by us hereinabove, the position has not been improved till today. We strongly feel that there should not be unreasonable delay in

execution of a decree because if the decree holder is unable to enjoy the fruits of his success by getting the decree executed, the entire effort of

successful litigant would be in vain.

17. We are sure that the Executing Court will do the needful at an early date so as to see that the long drawn litigation which was decided in favour of

the appellant is finally concluded and the appellant-plaintiff gets effective justice.??

17. In the instant case, as would appear that as many as 160 dates were passed after the decree of possession was put to execution. In any

eventuality the hope of the decree holder towards the Court cannot be belied and it cannot be deemed to a story book land, where it can be said that

no one is responsible for anything and finding out the responsibility is the least popular action. The Courts are not expected to sit on the fence when

the law is already existing to take things under control and the fruits of decree cannot be allowed to be robbed by litigant managed proceedings. The

decree has to be really meaningful and efficient and if the nectar of the decree

are not consumed, the litigant may lose the faith in the Court itself.

18. Under the circumstances, instant petition is allowed. The order dated 29/11/2017 is set aside. It is directed that on payment of process possession warrant be issued against the judgement debtor and in case demolition of the superstructure is required, the same has to be carried out. State is directed to provide entire necessary police help to the decree holder. In case of any resistance, it is directed that the person who resists the execution of decree shall be taken into custody and possession of decree has to be executed. It is further made clear that police help as has been ordered will not be mere formality only and if need be then adequate sufficient police force may also be deployed till the demolition is carried out. The executing court is directed to execute the decree within a further period of 45 days after production of this order before the court.