
(2008) 03 AHC CK 0019
In the Allahabad High Court

Pramod Kumar Maheshwari	Vs	APPELLANT
Rajendra Kumar and Others		RESPONDENT

Date of Decision : 29-03-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : (2008) 03 AHC CK 0019

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dilip Gupta, J.—This case depicts how the tenant, in spite of the Judgment and order dated 26th October 2006 of this Court in Writ Petition No. 2558 of 2001 allowing the petition filed by the landlord with a direction to the tenant to not only deposit the entire arrears of rent together with interest within a month but to handover peaceful possession of the accommodation to the petitioner-landlord within three months from the date of Judgment has been able to thwart all attempts of the landlord to obtain possession of the premises by raising frivolous objections in Execution Case No. 14 of 2007.

2. The portion relevant for the purposes of the petition of the said Judgment and order dated 26th October 2006 of this Court is quoted below:

The dispute being raised by the tenants that Sri R.K. Agarwal is the only landlord appears to be pressed by the tenants only for the purpose of remaining in possession of the disputed accommodation somehow or the other even though they have defaulted in payment of rent, as stated above. In case there is any dispute between the co-owners it is for them to settle their dispute through family settlement or through Court but it is not open for the petitioners to take advantage on the basis of their pleadings that only Sri R.K. Agarwal is the landlord when admittedly he has not come forward to claim himself to be the sole landlord.

For the reasons stated above, the writ petition is allowed. The respondent-tenant will deposit the entire arrears of rent together with interest of 10 per cent per annum before the respondent No. 2 within a month from today. It is directed that the respondent-tenant will handover peaceful possession of the accommodation, in dispute the petitioners-landlords within three months from today. In case of non-compliance of the aforesaid directions, the tenant will be liable to be evicted by coercive process with the aid of local Police and the arrears of rent shall be recoverable as arrears of land revenue.

3. The records of the writ petition indicate that the petitioner was a tenant of a shop in premises No. 43/165, Chowk Dhobi Marg, Kanpur Nagar. The landlord Smt. Annapurna Devi filed SCC Suit No. 398 of 1990 before the Judge, Small Cause Courts, Kanpur Nagar for eviction and recovery of arrears of rent. During the pendency of the suit, Smt. Annapurna Devi died and respondents Nos. 1 to 5 herein were substituted as legal heirs and representatives. The suit was decreed by the Judgment and order dated 30th November 1999, but feeling aggrieved, the tenant filed SCC Revision No. 259 of 1999 which was allowed. It is against this Judgment and order passed by the Revisional Court that the landlord-respondents in the present petition, filed Writ Petition No. 2558 of 2001 which was allowed by means of the Judgment and order dated 26th October 2006 referred to above. A perusal of the Judgment indicates that the tenant did raise a dispute that only Sri Rajendra Kumar Agarwal was the landlord but the learned Counsel for the tenant made statement before the court that Rajendra Kumar Agarwal never disputed this fact before the Courts below that he was not the only landlord.

4. As noticed herein above, under the directions of this Court in the aforesaid writ petition, the tenant was not only held liable to deposit the arrears of rent with interest but the tenant was also required to handover peaceful possession of the accommodation to the landlords within three months from the date of the Judgment failing which the tenant was liable to be evicted by coercive process with the aid of local police and the arrears of rent were to be recovered as arrears of land revenue.

5. The tenant, however, did not vacate the premises within the aforesaid period and, on the other hand, filed objections u/s 47 of the CPC (hereinafter referred to as the CPC) in Execution Case No. 14 of 2007, which were registered as Misc. Execution Case No. 22/74 of 2007. In the objections the tenant took the pleas that after the Judgment dated 26th October 2006, a family settlement took place between the landlords in which Rajendra Kumar Agarwal got his share demarcated and since the shop in dispute fell in his share, it was given on rent to the Judgment-debtor Pramod Kumar Maheshwari w.e.f. 1st December 2006 on a monthly rent of Rs. 200/-. It was, therefore, prayed that the execution proceedings taken against the Judgment-debtor should be dropped.; that Rajendra Kumar Agarwal had given him a written permission for repairing of the premises on 2nd April 2003 on the basis of which he had incurred huge

expenditure and that he had filed a review petition in Writ Petition No. 2558 of 2001 which was pending disposal; that subsequently, Rajendra Kumar Agarwal and his brother played fraud upon him by asking him to vacate the premises and, therefore, he had filed Suit No. 122 of 2007 (Pramod Kumar v. Rajendra Kumar and Ors.) in the Court of Civil Judge (Junior Division), Kanpur Nagar but no injunction was granted to him.

6. Pramod Kumar Maheshwari also filed an affidavit of Rajendra Kumar Agarwal (paper No. 57Ga). In the said affidavit it has been mentioned that after the decision of this Court, a family settlement took place in which the deponent got his share demarcated and the shop in dispute fell in his share. It has also been stated that the deponent had given this shop on rent to Pramod Kumar Maheshwari w.e.f. 1st December 2006 on a monthly rent of Rs. 200/- and that he had not given any affidavit in favour of Virnedra Kumar Aagarwal and nor had executed any power of attorney in favour of Virendra Kumar.

7. The decree holders had filed before the Executing Court, the power of attorney executed by Rajendra Kumar Agarwal, (paper No. 34Ga) and also an affidavit of Rajendra Kumar Agarwal (Paper No. 13Ga). The power of attorney executed by Rajendra Kumar Agarwal mentions that his wife relinquished her share in the property after obtaining Rs. 2 lacs and the affidavit filed by Rajendra Kumar Agarwal also confirms this fact.

8. The Executing Court rejected the objections by the order dated 31st January 2008. SCC Revision No. 37 of 2008 was filed by the tenant to set aside this order. The Revision was dismissed by the Judgment and order dated 13th March 2008.

9. This petition has been filed by the tenant for setting aside the aforesaid two orders dated 31st January 2008 and 19th March 2008.

10. I have heard Sri R.P. Mishra learned Counsel appearing for the petitioner and Dr. Madhu Tandon learned Counsel appearing for the respondents.

As noticed above, the main objection raised by the judgment-debtor in the Execution case was that after the Judgment of this Court on 26th October 2006, the shop in disputed was again let out to him by Rajendra Kumar Agarwal in whose share the shop fell on the basis of the family settlement between the landlords after the aforesaid decision of this Court and in support of this plea he had filed the affidavit of Rajendra Kumar Agarwal (Paper No. 57Ga).

11. In the said affidavit, it has been stated that after the decision of this Court in the Writ Petition on 26th October 2006, the deponent got his share partitioned and the shop in dispute fell in his share and he had again given the shop on rent to Pramod Kumar Maheshwari on 1st December 2006 and that he had not executed any affidavit in favour of Virendra Kumar and nor had he executed any power of attorney in his favour. This affidavit does not mention the date when the family settlement took place and nor has it been brought on record. The

Executing Court and the Revisional Court have on appraisal of evidence disbelieved the family settlement and have rejected the objections.

The facts clearly reveal that the petitioner was a tenant of a shop in respect of which the landlord had filed a Suit for ejectment and recovery of arrears of rent. The Suit was decreed but the Civil Revision filed by the petitioner-tenant was allowed. The writ petition filed by the landlord was however allowed by this Court by the judgment and order dated 26th October 2006 and three month's but nine months' time was given to the petitioner to vacate the shop and pay the arrears of rent. The tenant, however, did not comply with the directions issued by this Court and instead filed objections u/s 47 CPC before the Executing Court alleging that fresh tenancy was created by Rajendra Kumar Agarwal. The landlord-decree-holder filed objections clearly stating that no such fresh tenancy had been created in favour of the tenant-judgment-debtor.

In this regard, the provisions of Order 21 Rule 2 CPC need to be examined. It would, therefore, be necessary to refer to Section 47(1) CPC and Order 21 Rule 2 CPC and they are as follows:

Section 47. "Questions to be determined by the Court executing decree.- (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

(2) ...

(3) ...

Order 21 Rule 2. "Payment out of Court to decree-holder.- (1) Where any money payable under a decree of any kind is paid out of Court, or a decree of any kind is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree, and the Court shall record the same accordingly.

(2) The judgment-debtor or any person who has become surety for the judgment-debtor also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if, after service of such notice, the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

(2-A) No payment or adjustment shall be recorded at the instance of the judgment-debtor unless:

(a) the payment is made in the manner, provided in Rule 1; or

(b) the payment or adjustment is proved by documentary evidence, or

(c) the payment or adjustment is admitted by, or on behalf of, the decree-holder in his reply to the notice given under Sub-rule (2) of Rule 1, or

before the Court

(3) A payment or adjustment, which has not been certified or recorded as aforesaid, shall not be recognised by any Court executing the decree.

12. It is, therefore, clear that Sub-rule (1) of Rule 2, noted above, requires that where any money payable under a decree is paid out of Court or the decree of any kind is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, he shall certify that payment or adjustment in the Court which is to execute the decree and the Court is enjoined to record the same. Sub-rule (2) thereof enables the judgment-debtor or a person who has become surety for him to inform the Court of such payment or adjustment and prescribes the procedure to have it recorded. Rule 3 prohibits every Court executing the decree from recognising a payment or adjustment which has not been certified or recorded by the Court under the aforementioned sub-rules.

In *Sultana Begum Vs. Prem Chand Jain*, the Supreme Court observed as follows:

It is open to the parties namely, the decree-holder and the judgment-debtor to enter into a contract or compromise in regard to their rights and obligations under the decree. If such contract or compromise amounts to an adjustment of the decree, it has to be recorded by the Court under Rule 2 of Order 21. An agreement, contract or compromise which has the effect of extinguishing the decree in whole or in part on account of decree being satisfied to that extent will amount to an adjustment of the decree within the meaning of this rule and the Court, if approached, will issue the certificate of adjustment. An uncertified payment of money or adjustment which is not recorded by the Court under Order 21, Rule 2 cannot be recognised by the executing Court. In a situation like this, the only enquiry that the executing Court can do is to find out whether the plea taken on its face value, amounts to adjustment or satisfaction of decree, wholly or in part, and whether such adjustment or satisfaction had the effect of extinguishing the decree to that extent. If the executing Court comes to the conclusion that the decree was adjusted wholly or in part but the compromise or adjustment or satisfaction was not recorded and/or certified by the Court, the executing Court would not recognise them and will proceed to execute the decree.

The Supreme Court in *Lakshmi Narayanan Vs. S.S. Pandian*, examined the provisions of Section 47 CPC and Order 21 Rule 2 CPC and pointed out that where in any execution proceedings objection to executability of a decree is taken u/s 47 of the C.P.C. on the ground that by virtue of a compromise, the decree got extinguished and became inexecutable, the germane question that should be asked is whether the compromise was recorded by the Court whose duty it is to execute the decree. It was then observed that since there was no recording of the compromise as contemplated under Order 21 Rule 2 CPC the Court cannot recognise the compromise having regard to the language of Sub-

rule (3).

In the present case, it is not in dispute that the decree holder did not certify to the Court that such payment had been made and neither did the Court record the same. In view of the law laid down in the aforesaid decisions of the Supreme Court the creation of the so called fresh tenancy cannot be accepted.

It is, therefore, a clear case where the tenant in his attempt to retain possession of the shop has violated the directions issued by this Court in Writ Petition No. 2558 of 2001 on 26th October 2006. Under the directions issued by this Court, he should have given possession of the shop on or before 25th January 2007 but he has been able to unauthorizedly retain possession of the premises.

13. This is, therefore, a fit case where exemplary costs should be awarded to the respondent-decree-holder and landlords. The petitioner has retained possession of the shop for 2 years three months. It would, therefore, be appropriate to award exemplary costs of Rs. 50,000/-.

14. The petition is, accordingly, dismissed. The petitioner is directed to deposit Rs. 50,000/- before the Executing Court within a period of one month from today failing which it shall be recovered as arrears of land revenue by the District Magistrate, Kanpur-Nagar. In addition the petitioner shall also deposit all the arrears of rent along with interest as directed by this Court by the Judgment and order dated 26th October 2006 within a period of one month from today failing which the said amount shall also be recovered as arrears of land revenue. The Executing Court shall also ensure that the landlord is given possession of the shop forthwith. It is made clear that the Executing Court shall not entertain any application that may be filed by the petitioner for resisting the dispossession.

15. Learned Counsel for the petitioner, however, vehemently prayed that two weeks may be granted from today to the petitioner to vacate the shop and that he shall positively vacate it and give vacant possession to the landlord within the said period of two weeks. Upon furnishing of such an undertaking by the petitioner before the Executing Court, by 5th April 2008, the dispossession of the petitioner from the shop in dispute may not be carried out during the period of two weeks.