
(2022) 10 TEL CK 0034

In the Telangana High Court

Case No : Civil Revision Petition No. 1781 Of 2021

R.A. Dayanand And Another

APPELLANT

Vs

M/S. Ashoka Chambers Owners Association And 12 Others

RESPONDENT

Date of Decision : 20-10-2022

Acts Referred:

Limitation Act, 1963 — Article 135

Code Of Civil Procedure, 1908 — Order 19, Order 39 Rule 1, Order 39 Rule 2, Order 21 Rule 32

Citation : (2022) 10 TEL CK 0034

Hon'ble Judges : P.Sree Sudha, J

Bench : Single Bench

Advocate : Bankatlal Mandhani

Final Decision : Allowed

Judgement

1. This Civil Revision Petition is filed against the orders of the trial Court in E.P.No.4 of 2018 in I.A.No.297 of 2013 in O.S.No.872 of 2013, dated 09.09.2021.

2. O.S.No.872 of 2013 is filed by the plaintiffs/revision petitioner against M/s. Ashoka Chambers Complex Building, represented by its Secretary for mandatory injunction against the defendants Nos.1 to 13/respondents herein to restore status-quo-anti of electric transfer and mandatory injunction directing the defendant No.3 for removal or demolition of illegal construction made by the legal representatives of defendant Nos.6 & 7 colluding with defendant Nos.1, 2 & 5 in the "B" schedule property and for grant of perpetual injunction against the defendants 1, 5 and legal representatives of defendant No.6 from interfering in the enjoyment of common passage for parking and also to direct the defendant Nos.1,2 and 5 to render true accounts pertaining to the maintenance of the Ashoka Chambers building and for perpetual injunction against the defendant Nos. 1, 2 to 5, legal representatives of the defendant No.6 & 7 from using any portion of front open space of plaintiffs premises situated in Ashoka Chambers, Adarshnagar, Hyderabad, and to award damages to a tune of Rs.2,75,000/- for

breach of Easementary Rights and causing damages to the schedule property, including common areas, common parking, common passage, cellar portion and common amenities etc., for day-in and day-out”.

3. During the pendency of the suit proceedings, I.A.No.297 of 2013 is filed under Order 39 Rule 1 & 2 of CPC for granting of temporary, mandatory injunction directing the defendants 1 to 6 to remove and demolish pan bunk, causing obstruction to southern common passage, bathroom, syntex water tanks and gas cylinders etc., in the common parking place in Ashoka Chambers Complex Building. Petitioner Nos.1 and 2 herein are the absolute owners and possessors of shop No.3 on the ground floor of Ashoka Chambers Complex Building, facing to road side of the complex with shutters open one towards the eastern side of the main road and another on the northern side of the common passage of the said complex. The petitioners purchased shop premises under registered sale deed vide document No.1555/91, dated 24.07.1991.

4. The Trial Court considering the arguments of both sides held that there is prima facie case and balance of convenience is in favour of the petitioners herein and granted temporary injunction in the said interlocutory application.

5. The decree holders filed E.P.No.4 of 2018 before the VI Junior Civil Judge, City Civil Court, Hyderabad, under Order 21 Rule 32 of CPC against the Judgment debtor Nos.1 to 13, seeking for removal and demolition of Pan Bank, causing obstruction to Southern common passage which is on the extreme South Eastern front side of the ground floor of the complex and Bathroom and Syntex water Tanks, Gas Cylinders etc., erected on the South West back side of the Ground floor of the complex known as Ashoka Chambers.

6. The decree holders/petitioners herein stated that judgment debtor Nos. 1 to 13/respondents herein did not comply with the orders passed in I.A.No.297 of 2013 in O.S.No.872 of 2013, dated 03.06.2015 and they did not prefer any appeal against the orders passed in the said application and no stay orders are pending. After passing of the order in the said IA the respondent No.6 herein was expired on 20.08.2015 leaving behind the respondent Nos.8 to 12 herein as legal representatives and therefore, the decree holders/petitioners herein requested the Court to issue warrant directing bailiff to remove and demolish Pan Bank causing obstruction to the Southern common passage, which is on the extreme South Eastern front side of the ground floor of the complex and bathroom and syntax water tanks, gas cylinders etc., erected on the South West back side of the ground floor of the complex known as Ashoka Chambers.

7. In the counter filed by the judgment debtor Nos.8 to 12, they stated that execution petition filed by the decree holders/petitioners herein is not maintainable and hence, they have preferred an application along with an application to condone the delay in CMA.Sr.No.10903 of 2018 and it is still pending before the learned Chief Judge, City Civil Court, Hyderabad. The relief sought for by the decree holders/petitioners herein in the execution petition

cannot be executed as the mandatory injunction and orders cannot be passed in interim application and interim orders cannot be in the contravention with the main relief in the suit. If the EP is executed, suit becomes infructuous. Further, if the EP is executed and if the demolition is carried out and if the suit is dismissed on merits after conclusion of trial, judgment debtors cannot be put back to the possession and irreparable loss and injury would cause to the respondent Nos.8 to 12 herein. They further stated that if the constructions are made against the sanctioned plan, the respondent corporation is at liberty to proceed against the respondent Nos.1 to 7 as per due process of law. It is for the decree holders/petitioners herein to prove that constructions are made in violation of the sanctioned plan. Decree holders/petitioners herein are also having one mulgi in the schedule mentioned apartment and hence, requested the Court to dismiss the execution petition. The Trial Court considering the arguments of both sides dismissed the execution petition. Aggrieved by the said order, this Civil Revision Petition has been preferred by the plaintiffs.

8. On a perusal of the records, it is seen that the Trial Court cannot go behind the decree but the trial Court erroneously dismissed the execution petition. Execution Petition was rightly filed by the revision petitioners in pursuant to the orders passed in I.A.No.297 of 2013, dated 03.06.2015 within three years. When there is no specification of the date to commence execution as per the Article 135 of the limitation Act, in view of the dismissal of the I.A. valuable right of the revision petitioners was put at jeopardy. Execution Court does not have appellate jurisdiction or original jurisdiction and hence, the order of the trial Court is ill founded and unknown to CPC, where an order was passed considering Exs.P1 to P19 on merits. The trial Court, heavily swayed away by submissions of the learned counsel for the judgment debtors, had dismissed the interlocutory application in I.A.No.2548 of 2018 in CMA SR.NO.10903 of 2018 on 17.12.2018 itself. Therefore, they have requested the Court to set aside the order.

9. The judgment debtors/respondents herein mainly contended that as suit itself is filed for mandatory injunction, if the orders in I.A. are executed, it amounts to dismissal of the suit as infructuous. In fact, the Trial Court also convinced the arguments of the judgment debtors/respondents herein in and dismissed execution petition.

10. Admittedly, the suit is filed for granting of mandatory injunction and for perpetual injunction but during the pendency of the suit, I.A.No.297 of 2013 was filed for remove and demolish pan bunk, causing obstruction to southern common passage, bathroom, syntex water tanks and gas cylinders etc., in the common parking place in Ashoka Chambers Complex Building. The said I.A.No.297 of 2013 was allowed and thereafter, execution petition was filed and after hearing both sides, it was dismissed on the ground that if EP is executed suit becomes infructuous and nothing remains in the suit. Moreover, decree holders/petitioners herein did not prove that construction is made in violation of the sanctioned plan.

11. I.A.No.297 of 2013 was filed for mandatory injunction, the injunction was granted in favour of the petitioners and the said order was never challenged by the respondents and it attained finality as such the petitioners herein/decreed holders have also filed EP for execution of the said orders. Therefore, the order of the trial Court is not executable and it is not tenable.

12. As rightly pointed out by the decree holders/revision petitioners, executing Court cannot go beyond the decree and the arguments of the learned counsel for the judgment debtor's/respondents herein, if the main suit is disposed in favour of the judgment debtors/respondents herein non-irreparable loss would be caused to the plaintiffs in the suit. If at all, the order in I.A.No.297 of 2013 is executed prior to the disposal of the suit, no doubt orders were passed in the interlocutory application during the pendency of the suit proceedings, but as the appeal was not preferred against them, they were made absolute.

13. The respondent in the Trial Court might have objected strongly for the issuance of the mandatory injunction in favour of the decree holders/revision petitioners herein at interlocutory stage but they failed to do so. When the orders were passed in I.A., the judgment debtors/respondents herein made an effort to prefer an appeal but there was a delay of merely three years. Though this petition is filed before learned chief justice, City Civil Court for condonation of the delay, it was dismissed. As such, the orders passed in I.A. attained finality and the decree holders/revision petitioners filed execution petition for execution of the orders of the Trial Court as there was no stay granted during the pendency of the proceedings, the Trial Court ought to have granted mandatory injunction as sought for in the application but without appreciating the facts on record in proper manner dismissed the said execution petition and the said order by the trial Court is erroneous and the same is liable to be dismissed.

14. In the result, this Civil Revision Petition is allowed by setting aside the orders passed in E.P.No.4 of 2018 in I.A.No.297 of 2013 in O.S.No.872 of 2013, dated 09.09.2021, by the learned VI Junior Civil Judge, City Civil Court, Hyderabad. No costs.

15. As a sequel, miscellaneous petitions if any shall stand closed.