

(2018) 09 UK CK 0011

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 2667 of 2018

Ravindra Kumar Bhatia

APPELLANT

Vs

Tapan Mittal

RESPONDENT

Date of Decision : 05-09-2018

Acts Referred:

Code of civil procedure, 1908 — Section 115, 115(4)
Provincial Small Cause Courts Act, 1887 — Section 17, 25

Citation : (2018) 09 UK CK 0011

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : Neeraj Garg

Final Decision : Dismissed

Judgement

Sharad Kumar Sharma, J.

Against an exparte decree dated 25.04.2015 passed in SCC Suit No. 9 of 2013 â??Tapan Singh Mittal vs. Ravindra Kumar Bhatiaâ?? a belated SCC Revision under Section 25 of the Act was preferred by the present

petitioner, who is a tenant, along with the Delay Condonation Application, which was registered as Miscellaneous Case No. 04 of 2017 â??Ravindra Kumar Bhatia vs. Tapan Mittalâ??. During the pendency of the

Miscellaneous Case No. 04 of 2017, whereunder Section 5 application in the Revision was pending consideration, respondent decree holder filed an execution of decree dated 25.04.2015 in the Executing Court

registered as Execution Case No. 02 of 2017 â??Tapan Mittal vs. Ravindra Kumar Bhatiaâ??. Initially Executing Court had passed an order of issuance of parwana dakhla on 03.07.2018, which is quoted hereinbelow:

â??fnukad 03-07-2018

Okkn iqdkjk x;kA fMÃ?hmkj mifLFkr] fu.khZr _.kh vuqifLFkr gSaA vr% fu.khZr
_.kh }kjk izLrqr izkFkZuk i= la[;k 10x cy u fn;s tksus ds dkj.k [kkfjt fd;k tkrk
gSA n[ky ijokuk tkjh gksA fMÃ?hmkj iSjoh djsaA i=koyh

vfxze vknsâ??k gsrq fnukad 01-08-2018 dks isâ??k gksA

Â¼izfrHkk frokjhÂ½

flfoy tt Â¼lhOfM0Â½

nsgjknwuâ??

2. Case of the petitioner is that on getting knowledge of exparte decree dated 25.04.2015, the petitioner contends to have filed Order 9 Rule 13 application to set aside the exparte decree. The application of the

petitioner was rejected vide order dated 16.09.2017, due to non compliance of Section 17 of the Provincial Small Causes Courts Act. Its only after dismissal of Order 9 Rule 13, the petitioner has filed SCC Revision on

27.09.2017 under Section 25 of the Act. While all these proceedings were going on the execution filed by the respondent decree holder was proceeding further and the Court passed an order on 03.07.2018 of parwana

dakhal.

3. When a proceeding are drawn under a Special Act and its procedure are governed under the provisions of the said Act, in particular, the provisions for providing a superior revisional or appellate forum, in that

eventuality the revisional provision of a general law will not apply to the order passed under the principle special statute. In particular, when in the present case the order of parwana dakhal challenge in Revision was not

kept in abeyance.

4. After the institution of the revision, Revisional Court issued notices under Section 5 application registered as Misc. Case No. 04 of 2017. Revision also accompanied an application paper No. 9 C for stay of execution

proceedings. During the pendency of Revision, as execution was proceeding and the Execution Court had issued parwana dakhal, the petitioner filed an application paper no. 22 C dated 06.07.2018 for staying the

proceedings of execution. The Revisional Court on 09.07.2018 passed the following order:

â??09-07-2018 okn iqdkjk x;k

i{kdkjx.k mifLFkr vk;sA

izkFkZuk i= 12 lh nsjhekQh izkFkZuk i= ij lquk okLrs vknsâ??kkFkZ fnukad 16-07-2018 dks isâ??k gks] izkFkhZ vf/koDrk }kjk izLrqr izkFkZuk i= ij lquk btjk;

okn la0 2@17 dh dk;Zokgh fn0 16-07-2018 ã?rdã? LFkfxr

dh tkrh gSAâ??

5. The case of the petitioner is that this order of 09.07.2018, where the execution proceedings was kept in abeyance was brought on record before the Executing Court on 11.07.2018. Later on the Miscellaneous Case

No. 04/2017 was taken up and the Delay Condonation Application filed by the petitioner tenant in the Revision was allowed on 16.07.2018 subject to payment of cost of Rs. 2,500/-. Thereafter the Revision was directed

to be listed for admission. Revision was remitted to District Judge, Dehradun. Thereafter as soon as Section 5 application was allowed, the order dated 09.07.2018, which was passed during the pendency of Section 5

application the order dated 16.07.2018 allowing delay condonation, the interim order dated 09.07.2018 loses its life as Misc. Case No. 04/2017 no more remained in existence as it stands disposed of, and furthermore

on allowing of delay condonation the order dated 09.07.2018 was never directed to be continued. Thereafter the Revision was taken up on 23.07.2018 and the SCC Revision No. 08/2018 was allocated, which is quoted

herein below:

â??fnukad 23-07-2018

;g i=koyh izFke vij ftyk tt] nsgjknwu ds U;k;ky; ls nsjh {kek ekQ gksus ds iâ?? pkr~ xzkg;rk ds fcUnq ij lqus tkus gsrq bl U;k;ky; dks izkIr gq;h gSA

2- xzkg;rk ds fcUnq ij lquk x;kA

3- ;g y?qokn fuxjkuh] y?qokn U;k;k/khâ??k@flfoy tt] lh0fM0] nsgjknwu }kjk ikfjr ,di{kh; fu.kZ; fnukafdr 25-04-2015 ls {kqC/k gksdj izLrqr dh x;h gSA

vkns'k

4- y?qokn iqujh{k.k ds :Ik esa ntZ jftLVj fd;k tk;sA

5- foi{kh dh vksj ls vf/koDrk Jh ts0ds0 tSu mifLFkr vk;sA mudk dSfo,V izLrqr Fkka

6- y?qokn iqujh{k.k ij lquokbZ gsrq fnukad 10-08-2018 dks isâ??k gksA

Â¼vkj0ds0[kqYcsÂ½

izHkkjh ftyk

U;k;k/khâ??k

nsgjknwuAâ??

6. The Revision of the petitioner accompanied with it an application for the grant

of interim order being Paper No. 9C. Admittedly till date the said application is pending consideration and no order has been passed on it,

under law when no order is passed it 4 would mean, there is no interim order granted in favour of the petitioner, mere pendency of stay application will not amount that stay is operating. Meaning thereby, the decree

dated 25.04.2015 rendered by the Small Causes Court stands in the eyes of law and even if the order dated 09.07.2018 is read the tenure of the interim order dated 09.07.2018 was only till 16.07.2018, thereafter it

becomes extinct.

7. The argument of the learned counsel for the petitioner is that since the order dated 09.07.2018, which was passed in Miscellaneous Case No.04/2017 was neither vacated, rescinded or modified by any subsequent

order, hence, it would continue to operate. This Court is not in agreement with the argument as extended by the learned counsel for the petitioner. The reason being:

(i) The order dated 09.07.2018 was to operate upto a specific date fixed by Court during pendency of Section 5 application.

(ii) On the expiry of the said date life of the interim protection granted during the pendency of Section 5 application will loose its significance.

(iii) When after allowing of the Section 5 application the status of Miscellaneous Case No. 04/2018 in which the order was passed itself looses its existence as soon as Revision is registered as an independent Revision

No. 08/2018.

(iv) Once the Revision is admitted by an order of 23.07.2018 and the Court has not passed an order granting an interim protection on his application paper No. 9 C or even of continuance of earlier an order dated

09.07.2018 it would amount to that the Court has not granted any shelter of interim order to the petitioner as against the execution of the order.

(v) even as per the principle of merger as soon as Misc. Case No. 04 of 2017 was decided on 5 16.07.2018, obviously the interim order granted on 09.07.2018 will stand merged.

8. In that eventuality, the learned Executing Court has passed the impugned order under challenge, whereby, the parwana amaldaramad issued was put to execution by the order dated 31.08.2018 passed on the

judgment debtor application 38C and 39C. In the application the petitioner submitted that against order dated 03.07.2018 of parawana dakhil, he has filed Revision No. 128/2018 under Section 115 of Code of Civil

Procedure which is pending in which date fixed in 04.09.2018. The respondent objected the application on the ground that there is no stay of execution from any Court, hence in view under Section 115(4) there is no

legal bar to proceed with execution. Section 115(4) is referred hereunder:

Uttarakhand-In its application to the State of Uttarakhand, for Section 115, the following section shall be substituted, namely:-

115. Revision-(4) A revision shall not operate as a stay of suit or other proceeding before the court except where such suit or other proceeding is stayed by the superior court.

Explanation I.-In this section-

(i) the expression "superior court" means-

(a) the district court, where the valuation of a case decided by a court subordinate to it does not exceed five lakh rupees;

(b) The High Court, where the order sought to be revised was passed in a case decided by the district court or where the value of the original suit or other proceedings in a case decided by a court subordinate to the

district court exceed five lakh rupees;

(ii) the expression "order" includes an order deciding an issue in any original suit or other proceedings.

Explanation II. The provisions of this section shall also be applicable to orders passed, before or after the commencement of this section, in original suits or other proceedings instituted before such commencement.

Explanation III. The provisions of this section shall not be applicable to the revisions already filed in the High Court before the commencement of this section. [Vide Uttaranchal Act 1 of 2006, S.2, w.e.f. the date

to be notified]

9. No doubt about it that against the issuance of parwana amaldaramad for the reasons best known to the petitioner, he has preferred a Revision invoking Section 115 of the Code of Civil Procedure. Even in the

Revision preferred by the petitioner under Section 115 of Code of Civil Procedure there is no interim order against the parwana amaldaramad. If that be so then sub section (4) of Section 115 will come into play, which

contemplates that merely filing or a pendency of a Revision will not amount to a stay granted in favour of the revisionist. Even otherwise also, once an order is passed on a Miscellaneous Case i.e. for example herein,

the interim order dated 09.07.2018, it will lose its life as a consequence of its

merger when the Revision is admitted on 23.07.2018.

10. Hence, I do not find any error in the impugned order under challenge. Consequently, the Writ is dismissed. There would be no order as to cost.