

(2013) 04 RAJ CK 0093

In the Rajasthan High Court

Case No : Civil Revision Petition No. 128 of 2011

R.R.P.P.N. and Others

APPELLANT

Vs

Satya Prakash

RESPONDENT

Date of Decision : 30-04-2013

Acts Referred:

Citation : (2014) 1 CDR 228

Hon'ble Judges : Bela M. Trivedi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Bela M. Trivedi, J.—The present revision petition has been filed under Sec. 115 of CPC challenging the order dated 13.5.08 passed by the Addl. Civil Judge (JD) No. 2, Jaipur City, Jaipur (hereinafter referred to as "the executing Court") in Execution Case No. 33/91, whereby the executing Court has dismissed the application of the petitioners filed under Sec. 47 of CPC. The short facts giving rise to the present petition are that the respondent-plaintiff had filed the suit being No. 894/85 against the petitioners-defendants challenging the order dated 15.2.85, whereby his services as Conductor were terminated. The said suit was decreed by the trial Court as per the judgment and decree dated 24.8.90. It appears that thereafter the respondent-plaintiff-decree-holder had filed the execution proceedings being Execution Case No. 33/91, in which the petitioner had filed the application under Sec. 47 of CPC contending inter alia that the decree passed by the civil Court is nullity and, therefore, could not be executed. The said application was dismissed by the executing Court vide the impugned order, against which the present petition has been filed.

2. It has been submitted by the learned senior counsel Mr. J.K. Singhi for the petitioners that the judgment and decree passed by the civil Court was nullity in view of the law laid down by the Apex Court in the case of Rajasthan State Road Transport Corporation and Another Vs. Khadarmal, . He also submitted that there was no need to challenge the decree which was a nullity in the eye of law and

the same could be challenged in the execution proceedings by filing the application under Sec. 47 of CPC. According to Mr. Singhi, the executing Court has materially erred in law in dismissing the application of the petitioners.

3. However, the learned counsel Mr. M.C. Jain for the respondent placing reliance on the latest judgment of the Supreme Court in the case of *R.S.R.T.C. and Others Vs. Deen Dayal Sharma*, 7 submitted that when a termination order is challenged on the ground of violation of principles of natural justice, the civil Court would have jurisdiction. Relying on the decision of the Supreme Court in the case of *Deepa Bhargava and Another Vs. Mahesh Bhargava and Others*, and *Haryana Vidyut, Parsaran Nigam Limited and Another Vs. Gulshan Lal and Others*, he submitted that the executing Court cannot go beyond the decree and there being no illegality in the impugned order passed by the executing Court, the revision petition deserves to be dismissed.

4. Having regard to the submissions made by the learned counsels for the parties and to the impugned order passed by the executing Court it appears that the petitioners-judgment debtors had not challenged the decree passed by the civil Court in Civil Suit No. 894/85, whereby the termination order of the respondent was set aside by the Court. The said judgment and decree having attained the finality, the respondent-decree holder had filed the execution proceedings, in which the petitioners had raised the objection that the decree being without jurisdiction was a nullity and could not be executed. The reliance was placed on the decision of the Apex Court in case of *RSRTC v. Khadarmal* (supra). However, as rightly submitted by the learned counsel for the respondent, in view of the latest judgment of the Supreme Court in case of *RSRTC v. Deen Dayal Sharma* (supra), the Apex Court has categorically held that if the standing order is infringed the jurisdiction of civil Court may be held to be barred, however if the suit is based on the violation of principles of common law or constitutional provisions or on other grounds, the jurisdiction of civil Court may not be held to be barred. In the instant case the trial Court having passed the decree considering the facts and circumstances of the case and assuming the jurisdiction, which has remained unchallenged on the part of the petitioners, the said decree had attained the finality. The learned counsel for the respondent has rightly submitted that the decree having attained the finality and the objectors having failed to point out as to how the decree was or is a nullity, the executing Court had to execute the same and could not have gone beyond the decree. In that view of the matter, the Court does not find any illegality or infirmity in the impugned order passed by the executing Court. The revision petition being devoid of merits deserves to be dismissed and is accordingly dismissed.