
(2015) 04 MP CK 0019
In the Madhya Pradesh High Court
Case No : WP-4638-2015

Satya Pal Anand

APPELLANT

Vs

Bal Neketan Nyas and Others

RESPONDENT

Date of Decision : 06-04-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 103, Order 21 Rule 35, 151

Constitution of India, 1950 — Article 14, 141, 19, 21, 215

Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 13, 3, 3(2)

Citation : (2015) 04 MP CK 0019

Hon'ble Judges : A.M. Khanwilkar, C.J.;Alok Aradhe, J.

Bench : Division Bench

Final Decision : Dismissed

Judgement

Alok Aradhe, J.—The petitioner, who has not fulfilled the terms and conditions, subject to which execution of the decree for eviction was stayed by a Bench of this Court in First Appeal, has filed the present petition, under Article 227 of the Constitution of India claiming multiple reliefs, which are reproduced below for the facility of reference:-

"(a) In view of the submissions made above, the operation of the order directing the deposit of Rs.10,13,078/- before 23.03.2015 be kindly stayed till the decision of this writ petition, and the cheque dated 20.03.2015, presented before the Id. Court below drawn in its favour, as was directed by it, be directed to be returned, to the petitioner, which had been presented, as a law abiding citizen, but, it was directed not to be en-cashed then, on 20.03.2015 and case is fixed for hearing on 30.03.2015, as the stay order prayed in Writ Petition No. 2804.2008 had not been then granted and liberty was granted to file this writ petition by the order emailed to the petitioner dated 24.03.2015. Therefore, stay order be kindly e-mailed to the learned Execution Court below adopting innovative approach to do justice or by Fax or Telephone directing the Learned Principal Registrar Judicial to communicate the order as soon as it is passed, directed a CC also to be provided

to the petitioner, soon upon passing of the prayed order ex-parte;

(b) And, the hearing of the MJC No. 40/2013 be kindly directed to be made by such other Hon''ble Court, i.e. other than the one presided by the learned Judge Mr.B.B. Shukla and Mr.B.S. Bhadhoria to ensure impartial and fair hearing thereof as per laws of this land, as constitutionally guaranteed;

(c) And, the hearing of the Execution case No. 18/2013 be also similarly directed to be done by another learned Judge of the Court below, to provide justice as per law and constitutionally guaranteed, to provide impartial and unbiased hearing, as per submissions made in para (b) above;

(d) And, in view of the submissions made supported with judgments of Hon''ble Supreme Court, the payment of monthly rent be kindly reduced to Rs.75/- per month being the agreed rent as the petitioner is not a trespassed but statutory tenant not liable to pay any damages or mesne profit as per laws of this land, but only the admittedly agreed rent @ Rs.75/- per month, directing refund of excessive amount deposited till 31.06.2015;

(e) And, the learned Court below be kindly directed to take steps as per law to collect the amount of the Bank Draft cited hereinabove from the State Bank of India, Bhopal, because having paid the amount in its favour, in the manner it was demanded, the petitioner has no more any authority to deal with it, and to fix the judicial responsibility for its not in time collection and for not issuing its receipt in time, the deserved directions be kindly given, and granting other deserved reliefs;

(f) And, contempt proceedings criminal be kindly initiated suo motu against the learned Senior Advocate Mrs. Shobha Menon and administrative action against her be also kindly initiated suo motu to withdraw her status of a learned Senior Advocate as per law;

(g) And, such exemplary and compensatory costs as deemed just be kindly awarded considering the high costs being suffered by the petitioner, as per law, who resides at Indore;

(h) And, that the Bal Niketan Nyas and its Pradhan Kailash Agrawal and the State of MP be kindly directed to pay a compensation of Rs.15 Lakhs by each of them in all not less than Rs.30,00,000/- because of unlawful entry made in the premises on 23.04.2014 and causing great injury to the commercial reputation, dignity and self respect of the petition and for the losses caused because of breaking the fixtures, showcases, stands racks, etc. and throwing on the public road various highly valued goods and loss caused by breakage and otherwise thereby and a compensatory cost of not lesser than Rs.2 Lakhs be kindly directed to be paid to the petitioner by the two concerned presiding officer of the executing court who had issued knowingly without jurisdiction the warrant for the delivery of the physical possession knowingly exceeding the lawful jurisdiction, and, who had passed acting contemptuously the order of dismissal dated

16.12.2014 of MJC No. 40/2013 and other unlawful orders knowingly acting without jurisdiction and the order of the dismissal of MJC 561/2012 knowingly without jurisdiction. And granting such other and further reliefs as deemed deserved in law."

2. In order to appreciate the scope and ambit of reliefs and the context in which the aforesaid reliefs are prayed for by the petitioner, it is apposite to refer to few relevant facts which are stated infra. The respondent No. 1 Trust filed a suit for eviction, possession and mesne profits against Anand Automobiles of which petitioner is the owner and proprietor. In the plaint, it was averred that provisions of M.P. Accommodation Control Act, 1961 (hereinafter referred to as "the Act") are inapplicable to the suit premises as it is owned by a charitable trust, in view of notification dated 7.9.1989 issued by the State Government granting exemption to accommodations from provisions of the Act issued in exercise of powers under Section 3(2) of the Act from provisions of the Act. The tenant resisted the suit inter-alia on the ground that issuance of notification dated 7.9.1989 does not result in an exemption from provisions of the Act in so far as respondent No. 1-Trust is concerned. The trial Court framed an issue and decided the same in favour of respondent No. 1 vide order dated 15.3.2004. Being aggrieved, the petitioner filed a writ petition namely W.P. No. 3192/2004 in which following reliefs were claimed:-

"(i) for a declaration that Section 3 of the Act are unconstitutional.

(ii) for a declaration that the notification dated 7.9.1989 issued by the M.P. State Government in exercise of power under Section 3(2) of the Act is constitutionally invalid and void ab initio and also ultra vires Section 3(2) of the Act.

(iii) for a declaration that each Trust claiming an exemption from the applicability of the Act, will have to make an application to the State Government disclosing the particulars entitling them to exemption under Section 3(2) of the Act and the State Government will have to decide whether such Trust is entitled to the exemption after hearing the affected persons and a further declaration that the notification dated 7.9.1989 does not grant any general exemption to charitable Trusts in particular the second respondent-Trust, from the application of the Act.

(iv) for a consequential declaration that the civil Court has no jurisdiction to entertain or hear the suit for eviction Civil Original Suit No. 20-A/2002 filed by the second respondent- Trust.

(v) for quashing the order dated 15.3.2004 passed by the trial Court answering the preliminary issue in favour of the landlord, the provision of Section 3(2) of the Act is unconstitutional"

3. A Division Bench of this Court vide order dated 17.8.2004 dismissed the writ petition. The relevant extract of the order reads as under:-

"Once the Supreme Court has held that the notification dated 7.9.1989 is valid, it is impermissible for us to entertain a contention that the decision of the Supreme

Court upholding the validity of the notification dated 7.9.1989 is erroneous with reference to some general principles laid down in an earlier decision of the Supreme Court. As the notification which is under challenge has been upheld by the Supreme Court and the other reliefs claimed by the petitioner are consequential upon the relief relating to the validity of notification dated 7.9.1989, the petition is liable to be dismissed as having no merit. Accordingly, it is dismissed" 4. The petitioner once again filed an application raising similar objection in the Civil Suit, which was rejected by the trial Court vide order dated 29.11.2005. That order was subject matter of challenge at the instance of the petitioner in W.P. No. 2842/2006, in which a Division Bench of this Court granted stay of proceeding before the trial Court, which was subsequently vacated vide order dated 17.7.2012. The trial Court vide judgment and decree dated 10.10.2012 decreed the suit for eviction and directed the petitioner to vacate the suit premises and to deposit arrears of rent due to respondent No. 1-Trust.

5. The petitioner filed First Appeal No. 1037/12, which was admitted by a Bench of this Court vide order dated 21.12.2012 and the execution of the decree for eviction was stayed subject to fulfillment of conditions mentioned therein. The relevant extract of the order reads as under:-

"Several contentions have been raised by appellant including virus and provisions as envisaged under Section 3 of the M.P. Accommodation Control Act to be unconstitutional and further it has been submitted that appellant never agreed to pay rent @ Rs.15/- per square feet of the tenanted premises and therefore he is not bound to pay or deposit the rent as decided by learned trial Court in the impugned judgment. Appellant further submits that notice of enhancement of rent sent by respondents to appellant was never served upon him although it was served upon his Manager. Hence according to him, service on Manager of said notice cannot be said to be service upon appellant. It has also been submitted by him that he is ready to pay or deposit the contractual rent which is Rs.75/- per month. Hence, it has been prayed that monetary part of the decree be also stayed alongwith the eviction part of the decree till the decision of this appeal.

Having heard appellant and learned senior counsel for respondents, it is directed that eviction part of the decree shall remain stayed till the decision of this appeal. However, since there will be no irreparable loss to the appellant in depositing the decretal amount and further he will not suffer any irreparable loss in case he deposits monthly rent @ Rs.5692/- as directed by learned trial Court that part of decree is not stayed.

The objection which appellant has raised during the course of argument shall be decided at the time of final adjudication of the appeal.

Thus, the execution of eviction part of decree shall remain stayed on the following conditions:-

(i) The appellant shall deposit decretal amount of Rs.1,13,840/- on or before

22.12.2012 in the trial Court/ Executing Court.

(ii) he shall also deposit the monthly rent @Rs.5692/- strictly in terms to Section 13 of the M.P. Accommodation Control Act.

(iii) the appellant shall also deposit the cost of plaintiffs/respondents on or before 22.12.2012 as directed by the learned trial Court and

(iv) the respondents No. 1 to 12 shall be free to withdraw the amount so deposited by appellant in the trial Court/Executing Court after furnishing security to the satisfaction of that Court.

It is however, made clear that if any of the aforesaid conditions is violated by the appellant, the respondents No. 1 to 12 shall be free to execute the decree."

Notably, this order has been allowed to attain finality.

6. Thereafter, a Division bench of this Court vide order dated 22.4.2014 dismissed the writ petition namely W.P. No. 2842/2006. The relevant extract reads as under:-

"5. Suffice it to observe that the issue regarding validity of the provisions and including the notification in question has already been dealt with in extenso by the Division Bench of this Court vide order dated 17th August, 2004 whilst dismissing the writ petition No. 3192/04. In our opinion, it is not possible to depart from the said legal position and in any case permit the petitioner to resort to successive proceedings for the same issue.

6. Besides, we find that the issue raised by the petitioner that the impugned notification does not deal with cardinal requirement stipulated in sub-section (2) of Section 3 of the Act that the whole of the income derived from which is utilized for that institution or nursing home or maternity home. This aspect has been dealt with by the Apex Court in the case of Ramgopal and Another Vs. Balaji Mandir Trust and Others, . From para 4 of the said decision, it is clear that this very contention was raised on behalf of the appellants therein but it did not find favour with the Apex Court. In the circumstances, the observation made in the order dated 22nd February, 2006 by our predecessors is no impediment for us to answer the preliminary objection raised by the respondents, which we find to be appropriate. Accordingly, this petition ought to fail.

7. We may place on record that the petitioner has asked for further reliefs including to initiate criminal contempt action against First Additional District Judge, Bhopal. However, in our order passed Yesterday, while disposing of I.A. No. 12193/2012, we have made it clear that the present petition having been filed under Articles 226 and 228 of the Constitution of India cannot be mixed up with the relief of initiating criminal contempt action and, more so, without making the person concerned party-respondent in the proceeding. As a result, even that relief need not detain us in disposing of this petition.

10. We also place on record that the petitioner has filed interlocutory applications

No. 14871/2012 for stay; 13881/2012 for taking subsequent events on record, 669/2013 for quashing the judgment and decree passed on 10.10.2012 by the Ist Additional District Judge, Bhopal and other reliefs; 1474/2014 application for amendment in the relief clause of the main petition and 4834/2014 for recalling the order dated 10.03.2014. In view of the dismissal of the writ petition, in our opinion, there is no need to hear these applications separately and the same, therefore, are disposed of.

11. At this stage, the petitioner makes an oral request that the order passed today should be kept in abeyance for a period of four weeks to enable the petitioner to file SLP before the Apex Court.

12. We find no reason to accede to this request. It is a matter of record that the petitioner has already filed First Appeal against the decree passed by the trial Court in which interim relief has been granted in favour of the petitioner. In that sense, no prejudice will be caused by rejecting the request for continuing the stay of this order. In fact, in the present petition, there is no interim order operating, as of today. Hence, this request is turned down"

7. Being aggrieved by the impugned judgment and decree of eviction and arrears of rent dated 10.10.2012, the petitioner filed an application under Order 21 Rule 35 and Rule 103 of the Code of Civil Procedure which was registered as MJC No. 561/12 on the ground that the decree for eviction does not bind the petitioner as the decree has been passed against the partnership firm whereas, the petitioner is in possession of the suit shop as owner of Anand Automobiles. The petitioner also filed an application which was registered as MJC No. 40/13 in which inter-alia it was prayed that judgment and decree dated 10.10.2012 is null and void as the same has been passed in violation of Articles 14, 19, 21, 50, 141, 215 and 301 of the Constitution of India. The Executing Court rejected both the applications vide order dated 16.12.2014. The application preferred by the petitioner under Order 21 Rule 35 read with Rule 103 of the Code of Civil Procedure was rejected on the ground that petitioner participated in the proceeding for eviction and in case he was not in occupation of the suit shop as partner, but as owner, he ought to have taken objection at the first instance. Having failed to do so, the petitioner is estopped by his conduct and the decree deserves to be executed against the petitioner, as he himself is in possession of the suit shop. The application preferred by the petitioner for recalling the judgment was rejected on the ground that judgment and decree dated 10.10.2012 is subject matter of challenge in the First Appeal.

8. The petitioner thereafter filed writ petition under Article 226, namely, W.P. No.2804/2015, in which, principally the petitioner sought relief of quashment of order dated 16.12.2014 passed in M.J.C. No561/2012 and M.J.C. No.40/2013 by the Executing Court. The aforesaid writ petition was dismissed by order dated 24.3.2015 on following terms:-

"25. Having held that the writ petition is not maintainable, we do not deem it

necessary to examine the grievance of the respondents about the frivolity of present proceedings resorted to by the petitioner with full understanding to gain some more time and to deny the respondents of the fruits of the decree operating in their favour a" because of non-fulfilment of the conditions by the petitioner which were imposed as condition precedent for stay of execution of the decree.

26. In the result, the writ petition is dismissed with the liberties, as aforesaid."

9. The petitioner by this fresh petition under Article 227 of the Constitution is essentially praying for transfer of execution proceedings to another Judge and for reduction of monthly compensation amount notwithstanding the conditional order passed on 21.12.2012 in First Appeal No. 1037/2012 to stay the eviction decree. The petitioner contends that power of superintendence under Article 227 of the Constitution of India is not confined to administrative superintendence only but such power includes within its sweep the power of judicial review. It is further submitted that this Court in exercise of power under Article 227 of the Constitution of India can interfere with the order passed by the Subordinate Court in cases acting beyond its jurisdiction, refusal to exercise jurisdiction, error of law apparent on face of record as distinguished from a mere mistake of law, arbitrary or capricious exercise of authority or discretion, a patent error in procedure, arriving a finding which is perverse or based on no material, or resulting in manifest injustice. In this connection reference has been made to the decision reported in Achutananda Baidya Vs. Prafulla Kumar Gayen and others, . It is also submitted that respondents No. 2 and 3, who are judicial officers have been impleaded by their names as they are necessary parties, as they have passed the order without jurisdiction and they have been impleaded to meet the law of natural justice. In this connection reliance has been placed on the decision of Supreme Court reported in Mohd. Shafi Vs. Additional District and Sessions Judge (VII), Allahabad and Others, , Prabodh Verma vs. State of U.P., AIR 1985 SC 167, Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, and Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, . Lastly, it is urged that the executing Court grossly erred in allowing the application under section 151 of the Code of Civil Procedure filed by respondent No. 1, when the machinery for execution of the decree is provided under Order 21 Rules 35- 103.

10. We have considered the submissions made by the petitioner. The principal relief claimed in the writ petition is with regard to "stay of order" dated 25.2.2015 passed by the Executing Court till the decision of this writ petition. No order passed by the trial/executing Court has been challenged.

11. In order to appreciate the scope of challenge to the aforesaid order it is pertinent to note that against judgment and decree of eviction dated 10.10.2012 passed by the trial Court, the petitioner has filed First Appeal No. 1037/2012 which was admitted by a Bench of this Court vide order dated 21.12.2012 and execution of the decree was stayed subject to fulfillment of conditions mentioned

therein. The order passed by the Bench of this Court has already been reproduced in paragraph 5 of this order. That order has been allowed to attain finality. From perusal of paragraph 5 of this order it is evident that the Bench of this Court has directed the appellant therein to deposit the rent at the rate of Rs.5692/- per month strictly in terms of section 13 of M.P. Accommodation Control Act, 1961. In view of order dated 21.12.2012 passed by a Bench of this Court in aforesaid First Appeal, the respondent No. 1 filed an application under section 151 of the Code of Civil Procedure in which prayer was made that since the petitioner has not complied with the terms and conditions of order dated 21.12.2012, therefore, warrant of possession be issued.

12. The trial Court disposed of the aforesaid application with the direction to the petitioner to deposit the rent as per order passed by this Court in First Appeal No. 1037/2012. It was further held that in case the arrears of rent is not deposited by the petitioner as directed by a Bench of this Court, the proceeding in accordance with law shall be initiated for recovery of amount of rent. The trial Court also acceded to the prayer made by respondent No. 1 that application filed by petitioner under Order 21 Rule 35 to 103 cannot be decided in execution proceeding and should be decided separately. The aforesaid prayer was not seriously opposed by the petitioner.

13. In view of the facts stated supra it is evident that the relief claimed by the petitioner in paragraph 7(a) of the writ petition with regard to stay of order dated 25.2.2015 passed by the Executing Court is misconceived, as the same would tantamount to modification of the order dated 21.12.2012 passed by a Bench of this Court in First Appeal No. 1037/2012 which is not permissible in exercise of power under Article 227 of the Constitution of India. For the aforesaid reasons, the relief claimed in paragraph 7(a) of the writ petition is misconceived, hence the same can not be granted to the petitioner.

14. The reliefs claimed in paragraphs 7(b) and 7(c) are to transfer the execution proceeding from the Court of respondent No. 2 and respondent No. 3 to any other Court to ensure fair and impartial hearing. In support of aforesaid submission the petitioner has not made any averment in the facts of the writ petition. However, paragraph 6(F) of the petition reads as under:-

"F. That the Judges (Protection) Act, 1985, deserves to be read down, as not permitting the Judges of the Courts of Justice like the Id. Executing court below, to commit knowingly glaring and manifest errors of law or to offend and violate the fundamental rights of the citizens of India, which ex-facie include a right to have justice as per law, which is bias-free, corruption free, perversion-free, glaring, and manifest errors free, including all errors of law, rendering the orders thus passed ultra vires and a nullity ab-initio for having been passed knowingly without jurisdiction, the petition involving arguable questions and duty of the Constitutional Courts, deserved admission as a matter of right in view of settled law of this land and more so after the growth of law." 15. The aforesaid pleading, in our considered opinion, cannot be the ground for transfer of

execution proceeding. In case, the petitioner is aggrieved by the order passed by the Executing Court he is at liberty to challenge the same before the appropriate forum. The aforesaid ground, in any case, cannot furnish the valid ground in law to implead the judicial officers, namely, respondent No. 2 and respondent No. 3 in their personal capacity. The Supreme Court in the case of Savitri Devi Vs. District Judge, Gorakhpur and Others, has deprecated impleading of judicial officer who decides the matter in civil proceeding. Similar view has been taken in R. Vishwanatha Pillai Vs. State of Kerala and Others, . In view of aforesaid enunciation of law by the Supreme Court we direct deletion of names of respondent No. 2 and respondent No. 3 from the cause title of the writ petition. The respondent No. 4 has no role to play in the execution proceeding which essentially arises from decree of eviction which has been passed in favour of respondent No. 1 against the defendant No. 1 in the said civil suit. Therefore, we direct deletion of name of respondent No. 4 as well. For the aforementioned reasons, we find that the reliefs claimed in paragraphs 7(b) and 7(c) of the relief clause are sans substance. Therefore, the same are rejected.

16. The petitioner in paragraph 7(d) has prayed for a direction for payment of monthly rent at the rate of Rs.75 per month on the ground that same was agreed between the petitioner and respondent No. 1. In our opinion, such relief cannot be granted to the petitioner in this proceedings under Article 227 of the Constitution as the same would tantamount to modification of the terms and conditions of the conditional order of stay of execution of said judgment and decree dated 21.12.2012 passed by learned Single Judge in First Appeal No. 1037/2012.

17. In paragraph 7 (e) the petitioner has prayed for a direction to the Executing Court to take steps as per law to collect the amount of Bank Draft from State Bank of India, Bhopal, as the petitioner has paid the amount in the manner in which it was demanded by the Executing Court. The petitioner has not filed copy of the judgment and decree dated 10.10.2012, therefore, we are unable to accede to this prayer made by the petitioner as there is no material on record to indicate whether any such direction, as prayed for by the petitioner in paragraph 7 (e) of the writ petition, has been issued by the trial Court while decreeing the suit. Accordingly, this relief also deserves to be rejected.

18. The relief claimed by the petitioner in paragraph 7 (f) is with regard to initiation of suo motu proceeding against senior counsel. In our considered opinion, such a relief, is misconceived as in the proceeding under Article 227 of the Constitution of India, the contempt proceeding cannot be initiated, more so without making concerned person as respondent in the proceeding. As a result, even that relief need not detain us in disposing of this petition.

19. The petitioner in paragraph 7 (g) has claimed exemplary and compensatory cost as per law. However, no basis for claiming such cost has been disclosed in the writ petition. Therefore, aforesaid relief also cannot be granted to the petitioner.

20 In paragraph 7 (h) of the writ petition, the petitioner has claimed compensation to the tune of Rs.30 Lacs against the respondent No. 1 and its President Shri Kailash Agrawal on account of unlawfully entering in the premises on 23.4.2014 and causing injury to the commercial reputation, dignity and self respect of the petitioner and for the losses caused to the petitioner. The petitioner has prayed for such relief for the first time in the proceeding under Article 227 of the Constitution of India. In our opinion, such relief cannot be granted as the same is clearly beyond the scope of the present proceeding under Article 227 of the Constitution of India.

21. In our considered opinion, the petitioner is filing successive writ petitions with the full understanding to gain some more time and to deny the respondent No. 1 fruits of decree which is operating in its favour, because of non fulfillment of the conditions by the petitioner which were imposed as condition precedent for stay of execution of the decree.

22. For the aforementioned reasons, we do not find any merit in the writ petition. The same fails and is hereby dismissed in limine.