
(2016) 05 DEL CK 0015
In the Delhi High Court
Case No : Ex. P. No. 85 of 2016

Shambhu Nath Das

APPELLANT

Vs

Director of Education

RESPONDENT

Date of Decision : 26-05-2016

Acts Referred:

Citation : (2016) 166 AIC 577 : (2016) 231 DLT 312

Hon'ble Judges : Mr. Valmiki J. Mehta, J.

Bench : Single Bench

Advocate : Mr. Rajiv Tyagi, Mr. Sambhav Gupta and Mr. Gyanendra Sharma, Advocates, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Valmiki J. Mehta, J.(Oral)—This execution petition is filed by persons who call themselves decree holders. The order which is however sought to be executed is not an order in a suit and the order which is sought to be executed is the final Judgment dated 6.3.2013 passed in W.P.(C) No. 2132/2011.

2. Provisions of the Code of Civil Procedure, 1908 (CPC) pertaining to the execution of orders and decrees are for execution of decrees and orders passed in suits. Section 2 of the CPC defines both 'decree' and 'order' as per sub-Section 2 and sub-Section 14 thereof. A decree under Section 2(2) CPC is a final determination of some or all the matters in controversy in a suit. An order as defined in Section 2(14) CPC is an order which is not a decree of the court.

In any case, both the decrees and the orders are determination of rights in the suit.

3. In my opinion, the present execution proceedings are misconceived and have been filed on concealment of facts, and are accordingly liable to be dismissed for the following reasons:-

(i) A final judgment in a writ petition is not a decree or order which is capable of

execution proceedings under CPC. Such a judgment is enforced by invoking the contempt jurisdiction of this Court.

(ii) Execution proceedings under CPC are with respect to decrees or orders passed in proceedings governed by CPC i.e suits.

(iii) Final judgments of writ petitions, if not complied with, cannot be treated as decrees for seeking the execution in execution proceedings by applying CPC. I may note that it is not as if that the present execution proceedings seek execution of costs which are imposed by the court as per a final judgment, and which costs can be taken as money decree for the purpose of execution. Section 141 CPC is clear that CPC does not apply to write petitions under Article 226 of the Constitution of India.

4. Learned counsel for the decree holders, during the course of hearing, has conceded to the fact that these very decree holders who have filed these execution proceedings, have already filed a contempt petition and which is pending disposal. Clearly, therefore, these execution proceedings filed simultaneously and parallel with contempt proceedings are not maintainable because there can only be one proceeding for implementation of a final judgment of a court and not two parallel proceedings. These execution proceedings are also therefore liable to be dismissed not only on account of concealment of facts but also on the ground that proceedings for implementation of the Judgment dated 6.3.2013 in W.P.(C) No. 2132/2011 is by filing a contempt petition filed by these very decree holders and which is pending before this Court.

5. Learned counsel for the decree holders has sought to argue that Section 36 CPC allows execution of final judgments passed in writ petition and for which purpose, counsel for the decree holders has placed reliance upon two judgments of the Supreme Court being *Food Corporation of India v. S.N. Nagarkar* (2002) 2 SCC 475 and *Puran Singh and Others v. State of Punjab and Others* (1996) 2 SCC 205.

6. The arguments urged on behalf of the decree holders by their counsel are without any legal basis whatsoever. Firstly, the judgment in the case of *Puran Singh* (supra) has no application whatsoever to the issue at hand because in para 11 of that judgment which is relied upon only talks of powers of a court hearing writ petitions being wider to the ordinary civil powers of an ordinary civil court. I therefore fail to understand as to how this judgment in the case of *Puran Singh* (supra) will be applicable.

7. The other judgment in the case of *Food Corporation of India* (supra) relied upon by the decree holders is also not applicable for the reason that the facts of the said case show that on a writ petition being allowed the writ petition's final order was to be implemented. Whereas the employer claimed that the judgment was implemented in totality for the benefits of pay being given from the date of joining, the successful writ petitioner also claimed nominal seniority, and which was in issue. In this regard the successful writ petitioner had earlier filed

contempt proceedings which were dismissed by the competent court, and therefore, it was held that once earlier contempt proceedings were dismissed, only independent proceedings would lie if any independent rights existed in favour of a successful writ petitioner. Reliance is placed upon by the counsel for the decree holders on paras 10 and 19 of the judgment, but I fail to understand as to how they will at all help the decree holders in the present case because it is nowhere held in this judgment that a final judgment of a writ court can be executed by filing execution proceedings under CPC, especially when the order sought to be executed is not an order in the nature of imposition of costs. Substantial relief granted in writ proceedings cannot be treated as costs merely because monetary reliefs are allowed in favour of a successful writ petitioner.

8. Learned counsel for the decree holders then sought to place reliance upon the orders passed by a Division Bench of this Court in EFA(OS) No. 7/2014 and it is argued that EFA(OS) No. 7/2014 was preferred against the final Judgment of the writ court dated 6.3.2013, and counsel for the decree holders wanted to draw the attention of this Court to the Order of the Division Bench dated 22.5.2015 in EFA(OS) No. 7/2014, however, it is noticed that after passing of the orders which are relied upon, another Division Bench of this Court in the same proceedings being EFA(OS) No. 7/2014, by its Order dated 12.2.2016 directed the present decree holders to file appropriate proceedings including if advised contempt proceedings, and which contempt proceedings are admittedly filed and pending. Therefore, it is not permissible for the decree holders to contend that any earlier orders prior to 12.2.2016 in EFA(OS) No. 7/2014 enable the decree holders to file these proceedings.

9. In view of the above, it is clear that the execution proceedings are wholly misconceived and are accordingly liable to be and are dismissed.