

(2013) 06 MEG CK 0002
In the Meghalaya High Court
Case No : CR (P) No. (SH) 10 of 2012

Shillong Muslim Union

APPELLANT

Vs

Smt. Laila Rynthathiang and Another

RESPONDENT

Date of Decision : 06-06-2013

Acts Referred:

Citation : (2013) 06 MEG CK 0002

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Advocate : A.S. Siddiqui, for the Appellant; S. Sen, for the Respondent

Final Decision : Allowed

Judgement

T. Nandakumar Singh, J.—The challenge in this revision petition is to the maintainability of T.S. No. 4(H) 2012 filed by the respondent/plaintiff, who was the pro forma defendant in T.S. No. 5(H) 2002 of the Court of Assistant District Judge, Shillong; and the relief sought for in the T.S. No. 4(H) 2012 are:-

(i) for declaration that the respondent/plaintiff is lawful tenant under the Shillong Muslim Union, represented by its Secretary EIDGAH, Laban, Shillong, plaintiff (present petitioner) of T.S. No. 5(H) 2002;

(ii) for declaration that the judgment and decree dated 11.07.2005 passed in T.S. No. 5(H) 2002 by the learned Assistant District Judge is void and is a nullity;

(iii) for a permanent injunction restraining the defendant (present petitioner) their agent, executor, administrator etc. from interfering, disturbing and forcefully dispossessing the plaintiff (present respondent) from the suit premises till she is evicted by due process of law;

(iv) for full cost of the suit; and

(v) any other relief/reliefs to which plaintiff is found entitled to under law.

Heard Mr. A.S. Siddiqui, learned counsel appearing for the petitioner and Mr. S.

Sen, learned counsel appearing for the respondents.

2. The short fact leading to the filing of the present revision petition is briefly noted. The present petitioner has several properties including the suit property situated at Quinton Road, Shillong. The present petitioner is a Union registered under the Societies Registration Act and having registration No. SRTSMU-13/76 of 1976. The Union was established as far back as on 1905 for carrying out various social work for the benefits of public at large and Muslim community in particular living in the State of Meghalaya.

3. The petitioner-Union had constructed a Guest House known as "Muslim Union Guest House" mainly used for the benefits of the Muslim community and is also made available for sheltering people in distress. The Union also let out some of the rooms to tenants on monthly rent basis. In the year 1987, Room No. 1 of the said Guest House was let out to Mr. Rafatulla Khan. The respondent and her husband were temporarily accommodated in the said Room No. 1 of the Guest House on monthly rent basis. The respondent and her husband had been asked to vacate the possession of the said room i.e. the Room No. 1. The respondent and her husband failed to pay the rent of the said room and sometime in the month of December, 1989, the respondent and her husband had made an assurance that he (husband) would clear all the monthly rent from 1st June, 1990, if he does not vacate the room then he will pay the monthly rent of Rs. 900/- per month.

4. Ultimately, the present petitioner filed the T.S. No. 5(H) 2002 against the present respondents Mrs. Laila Rynthathiang and her husband Mr. Rafatulla Khan for eviction from the said room i.e. Room No. 1 of the Guest House and also for the arrear of rents as permissible under the law till the date of tiling the eviction suit and till the final decree is passed and cost of the suit and any other relief to which the petitioner/plaintiff is entitled to in law and equity in the Court of the Assistant District Judge at Shillong. A copy of the plaint of T.S. No. 5(H) 2002 of the Court of Assistant District Judge at Shillong is available at Annexure-V to the present memo of revision petition.

5. On perusal of the plaint of T.S. No. 5(H) 2002, it is clear that the present respondent is pro forma respondent No. 2 in T.S. No. 5(H) 2002 and it is also pleaded in the plaint very clearly that the present respondent and her husband Mr. Rafatulla Khan were occupying the said Room No. 1 of the Guest House and also they had failed to pay the rent. The present respondent, who is the pro forma respondent No. 2 in T.S. No. 5(H) 2002 for the reasons best known to her did not file her written statement in T.S. No. 5(H) 2002. Her husband Shri, Rafatulla Khan, the defendant No. 1 of T.S. No. 5(H) 2002 filed the written statement and contested the suit. The defendant No. 1, who is the husband of the present respondent in his written statement had taken all the points for contesting the suit and also admitted in his written statement that the said Room No. 1 of the Guest House was occupied by the respondent and her husband i.e. defendant No. 1 and pro forma defendant No. 2 in T.S. No. 5(H) 2002. Therefore,

it is very clear from the record that the present respondent, who is the pro forma defendant No. 2 of T.S. No. 5(H) 2002 had all the knowledge of eviction suit i.e. T.S. No. 5(H) 2002 for evicting the respondent and her husband from the Room No. 1 of the said Guest House.

6. The learned trial court i.e. the Assistant District Judge, Shillong after full length trial of T.S. No. 5(H) 2002 passed the judgment and decree dated 14.07.2005 decreeing the eviction suit for evicting the respondent and her husband from the suit property i.e. Room No. 1 of the Shillong Muslim Guest House situated at Jail Road, Shillong and for recovery of vacant possession of the said room. Being aggrieved by the said judgment and decree dated 14.07.2005 passed by the learned Assistant District Judge, Shillong in T.S. No. 5(H) 2002, her husband (Shri. Rafatulla Khan defendant No. 1) of T.S. No. 5(H) 2002 filed the FAO No. 3(SH) 2005 in the Gauhati High Court, Shillong Bench. But the present respondent, who is also the defendant in T.S. No. 5(H) 2002, did not file the appeal against the said judgment and decree dated 14.07.2005 passed in T.S. No. 5(H) 2002 for evicting the respondent and her husband from the said room. Therefore, from this fact, the present respondent, who had a clear knowledge of the said judgment and decree of the Assistant District Judge, Shillong dated 14.07.2005 passed in T.S. No. 5(H) 2002 for evicting her from the said room cannot turn around at the last and assert that the said judgment and decree dated 14.07.2005 is not binding to her or void.

7. The High Court vide judgment and order dated 02.12.2011 had dismissed the FAO No. (SH)3/2005 with costs. The respondent and her husband (Shri. Rafatulla Khan) again filed an SLP No. 5638 of 2012 against the said judgment and order of the High Court dated 02.12.2011 passed in FAO No. (SH)3/2005 in the Supreme Court; the Hon''ble Supreme Court dismissed the SLP on 24.02.2012. Justice and equity demand that the fruit of the long drawn litigation should not be denied easily to the decree-holders and also frivolous litigation for depriving the fruit of the long drawn litigation should not be encouraged. The present petitioner, who is the plaintiff in T.S. No. 5(SH) 2002 and in whose favour the suit had been decreed by the said judgment and decree dated 14.07.2005 which again had been upheld by the Hon''ble High Court vide judgment and order dated 02.12.2011 passed in FAO No. (SH)3/2005 and affirmed by the Apex Court vide order dated 24.02.2012 passed in SLP No. 5638 of 2012 filed the execution case being Title Execution Case No. 1(H) 2012 for execution of the said judgment and decree for evicting the respondent and her husband from the said room i.e. Room No. 1 of the said Guest House on 17.02.2012.

8. After receipt of the notice of the said Title Execution Case No. 1(H) 2012, the present respondent, who is the pro forma respondent No. 2 in T.S. Case No. 5(H) 2002 filed the T.S. No. 4(H) 2012 for the relief mentioned above and some of the relief(s) sought for are:-

(i) for declaration that the respondent is a lawful tenant under the present petitioner in respect of the suit premises i.e. Room No. 1 of the Guest House;

(ii) for declaration that the judgment and decree passed in T.S. No. 5(H) 2002 passed by the Assistant District Judge, Shillong is void and is a nullity.

9. Resistance to delivery of possession to decree-holder are to be considered and deckled under Order XXI, Rules 97 , 98 , 99 , 100 and 101 and Section 47 of the CPC. For easy reference Rules 97, 98, 99, 100 and 101 are quoted hereunder:--

97. Resistance or obstruction to possession of immovable property -- (1) Where me holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

((2) Where any application is made under sub-rule (1), the court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.)

98. Orders after adjudication.-- (1) Upon the determination of the questions referred to in Rule 101, the court shall, in accordance with such determination and subject to the provisions of sub-rule (2),--

(a) make an Order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or (b) pass such other Order as, in the circumstances of the case, it may deem fit.

(2) Where, upon such determination, the court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the court may also, at the instance of the applicant, Order the judgment debtor, or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days.

99. Dispossession by decree holder or purchaser:--

(1) Where any person other than the judgment debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the court complaining of such dispossession.

(2) Where any such application is made, the court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

100. Order to be passed upon application complaining of dispossession - upon determination of the questions referred to in Rule 101, the Court shall, in accordance with such determination,-

(a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(b) pass such other order as, in the circumstances of the case, it may deem fit.

101. Question to be determined.--All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under Rule 97 or Rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the court dealing with the application, and not by a separate suit and for this purpose, the court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.)

10. Under Order XXI, Rules 98 & 101 read with Section 47 of the CPC, where the Court is satisfied that the resistance or obstruction was occasioned without any just cause by some other person at the instigation of the judgment debtor and the such person still resisted or obstructed in obtaining possession, shall be detained in the civil prison for a term which may extend to thirty days. Order XXI, Rule 101 of the CPC, clearly provided that all the questions including questions relating to right, title and interest in the property arising between the parties to a proceeding on an application under Rule 97 or Rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court i.e. the Executing Court dealing with the application and not by a separate suit.

11. Therefore, it is crystal clear that the suit i.e. T.S. No. 4(H) 2012 filed by the respondent is not maintainable, inasmuch as, no separate suit can be filed for the purposes mentioned in Order XXI, Rule 101 of the CPC. This Court reiterated that the executing court should take abundant care for not entertaining the frivolous litigation/application filed by the judgment-debtor or some other person at the instigation of the judgment debtor for delaying the execution of the lawful judgment and decree. The executing court shall keep in mind that judicial discipline and decorum demand that the judgment and decree passed by the highest court i.e. the Supreme Court and High Court shall not be stalled by passing interim order.

12. The Apex Court in

Atma Ram Builders Private Limited v. A.K. Tuli and Ors. (2011) 6 SCC 385

, had deprecated the frivolous objections filed in execution proceedings initiating another round of litigation and not only contempt proceeding had been initiated against the additional District Judge, who stayed the warrant of possession in superseding the judgment and order of the Apex Court but also taken up disciplinary proceeding against the said Additional District Judge i.e. Archana Sinha. The fact of the case in *Atma Ram Builders Private Limited* case (supra) is that the learned trial court had passed the judgment and decree for evicting the tenant and the judgment and decree of the learned trial court had been upheld

by the Delhi High Court and the Apex Court. In spite of that for having a second innings frivolous litigation had been filed through someone claiming to be co-tenant or as a sub-tenant of the tenant against whom the said decree for eviction had been passed. In this factual backdrop, the Apex Court passed the order for taking disciplinary action against the Additional District Judge, who entertained the frivolous litigation filed for second innings. Paras 4, 5, 6, 7, 8, 9, 10 and 11 of the SCC in Atma Ram Builders Private Limited case (supra) read as follows:-

4. It is deeply regrettable that in our country often litigations between the landlord and tenant are fought up to the stage of the Supreme Court and when the tenant loses in this Court then he starts a second innings through someone claiming to be a co-tenant or as a sub-tenant or in some other capacity and in the second round of litigation the matter remains pending for years and the landlord cannot get possession despite the order of this Court. The time has come that this mal-practice must now be stopped effectively.

5. After our order dated 6-10-2010, the counsel of the tenant should have advised the tenant to vacate the premises in question like a gentleman before or on the expiry of six months from 6-10-2010 but unfortunately they advised the tenant to put up some other person claiming independent right against the landlord as a sub-tenant and start a fresh round of litigation to remain in possession. In this manner, our order dated 6-10-2010 was totally frustrated.

6. In these contempt proceedings, we had passed the following order on 27-04-2011:

Very serious allegations have been made in these contempt petitions. By our Order dated 06.10.2010 we had dismissed the Special Leave Petitions of M/s. Udham Singh Jain Charitable Trust-the tenant by giving it six months time from that date to vacate the premises in question on furnishing usual undertaking before this Court within six weeks from that date. Despite that Order, the petitioner in the original Special Leave Petitions Nos. 27755-59 of 2010 has not vacated the premises in question nor did it file any undertaking before this Court. Instead, to frustrate the Order of this Court dated 6-10-2010 it got some persons to file frivolous objections before the executing court. One objector is none else than the son of one of the trustees of the tenant-trust, another objector is one of the trustees claiming to be the subtenant.

In our opinion, such conduct is contemptuous and is simply unacceptable. It prima facie seems to us that the alleged contemnors are only creating frivolous objections to start a second round of litigation, and frustrate the Order of this Court dated 6-10-2010. We have noted that the tenancy was for 10 years effective from 1-11-1982. Hence, the respondents in these contempt petitions (petitioner in the original Special Leave Petitions Nos. 27755-59 of 2010 and the objectors) should have handed over peaceful, vacant possession on 1-11-1992, but they have not done so till now.

Issue notice Dasti in addition.

List on 10-5-2011 by which time counter affidavit may be filed. It is made clear that the case will not be adjourned on that day. There are very serious allegations of flouting the Order dated 6-10-2010 passed by this Court. We may be constrained to pass harsher orders on that date if cause shown is not sufficient according to us. The alleged contemnors shall remain present in the Court on 10-5-2011.

The petitioner in these contempt petitions is allowed to implead Archana Sinha, Additional District Judge Central, Delhi. Issue notice to her also. She is directed to remain present in the Court on 10th May, 2011 to explain to this Court how and why she had passed the order dated 23.04.2011 in total defiance of the Order passed by this Court on 06.10.2010. She is also directed to file a personal affidavit before the next date of hearing. She shall also show cause why contempt proceedings be not taken against her and a recommendation be made by this Court for her immediate suspension.

Notice may be served dasti to Mr. Ashwani Kumar, Advocate-on-Record for the petitioner in the original Special Leave Petitions Nos. 27755-59 of 2010.

Copy of this Order shall be given to the alleged contemnors and Archana Sinha, Additional District Judge Central, Delhi, forthwith.

7. Today, when the case was taken up for hearing at 11.25 a.m., senior counsels appeared on behalf of the alleged sub-tenants and stated that their clients will vacate the premises. Hence, we directed that possession be handed over to the landlord by 12.30 p.m. today and we directed this case to be put up again before us at 12.30 p.m. today.

8. In this case, the order of this Court dated 06th October, 2010 has been totally flouted. It appears that the alleged sub-tenant in the execution proceedings raised an objection which was rejected on 01st April, 2011 against which an appeal was filed to the Additional District Judge Archana Sinha who by a detailed order dated 23rd April, 2011, has granted stay of the warrant of possession.

9. It seems to us that in this country certain members of the Subordinate Courts do not even care for orders of this Court. When this Court passed an order dated 06th October, 2010 granting six months' time to vacate, the contemnor Archana Sinha, Additional District Judge had no business to pass the order dated 23rd April, 2011 but instead she has stayed the warrants of possession, meaning thereby that she has practically superseded our order and overruled us.

10. We are constrained to say that a certain section of the subordinate judiciary in this country is bringing the whole judiciary of India into disrepute by passing orders on extraneous considerations. We do not wish to comment on the various allegations which are often made to us about what certain members of the subordinate judiciary are doing, but we do want to say that these kind of malpractices have to be totally weeded out. Such subordinate judiciary Judges are bringing a bad name to the whole institution and must be thrown out of the

judiciary.

11. In this case, the contemnor Archana Sinha had no business to pass the order dated 23rd April, 2011 and it is hereby quashed as totally void. We further direct the Hon'ble Chief Justice of the Delhi High Court to enquire into the matter and take such disciplinary action against Archana Sinha, Additional District Judge, as the High Court deems fit. Let a copy of this order be sent forthwith to Hon'ble the Chief Justice of the Delhi High Court for appropriate orders on the administrative side against Archana Sinha.

13. The Apex Court in

Vaniyankandy Bhaskaran v. Mooliyil Padinhjarekandy Sheela (2008) 10 SCC 491 (2008) 17 SCC 1 (AIR 2009 SC 250)

, had deprecated the frivolous litigation for staying the execution proceeding of the judgment and decree for evicting the tenant. In Vaniyankandy Bhaskaran's case (supra), the Apex Court dearly held that Order XXI, Rule 104 of the CPC will not be applicable in case the concerned execution case is filed earlier to the application filed by someone at the instigation of the judgment-debtor or any other person for which the Court requires inquiry for deciding the question mentioned in Order XXI, Rule 101 of the CPC. Paras 18, 19 and 20 of the SCC (Paras 14, 15, 16 and 17 of AIR) in Vaniyankandy Bhaskaran's case (supra) read as follows:-

18. The submissions made on behalf of the appellant regarding the applicability of Rule 104 of Order 21 of the Code have substance and merit consideration in an appropriate case, but they do not justify interference with the order of the High Court in the facts of this case. The suit filed by the appellant for specific performance of contract was considerably later in point of time than the commencement of the execution proceedings and, in any event, the language of Rule 104 is clear and unambiguous that any order made under Rule 101 or Rule 103 would be subject to the result of a suit pending on the date of commencement of the proceedings in which orders were made under Rule 101 or 103. Since the appellant's suit was filed long after the commencement of the execution proceedings, the provisions of Rule 104 of Order 21 of the Code will not apply to this case.

19. We cannot also find any fault with the views expressed by the High Court in relation to the provisions of Order 21, Rule 2 of the Code regarding adjustment of the decree in terms of an oral settlement alleged to have been arrived at between the parties on 21.02.2005. Furthermore, we also agree with the High Court that the burden of proving that the agreement relied upon by the appellants was manufactured had been wrongly shifted upon Respondent 1 in contravention of Section 103 of the Evidence Act, 1872.

20. We, therefore, find no reason for disturbing the order of the High Court impugned in this appeal on any of the grounds urged on behalf of the appellant.

The appeal, therefore, fails and is dismissed, with cost assessed at Rs. 10,000.

14. The Apex Court is of the similar view in Bhaskaran's case (supra). Paras 12, 13, 14, 15 & 16 of the SCC (Paras 12, 14, 15, 16, 17 of AIR) in Bhaskaran's case (supra) read as follows:-

12. Appearing for the respondent, Mr. Vishwanathan, on the other hand, submitted that the submission regarding the applicability of Rule 104 of Order 21 of the CPC to the facts of this case was wholly misconceived since the execution proceedings had been commenced long before the appellant's suit for specific performance was filed. While the respondent suit for recovery of possession was decreed in 1990, the execution proceedings for executing the decree was commenced on 3-11-2004, and the appellant filed his suit for specific performance about ten months later on 27-8-2005. Mr. Vishwanathan submitted that since the eviction proceedings against the appellant's wife had reached its final stages, the appellant raised a new claim based on an unregistered document to stall the execution of the decree for possession made as far back as in 1990.

13. The submissions made on behalf of the appellant regarding the applicability of Rule 104 of Order 21 of the Code has substance and merits consideration in an appropriate case, but they do not justify interference with the order of the High Court in the facts of this case.

14. The suit filed by the appellant for specific performance of contract was considerably later in point of time than the commencement of the execution proceedings and, in any event, the language of Rule 104 is clear and unambiguous that any order made under Rule 101 or Rule 103 would be subject to the result of a suit pending on the date of commencement of the proceeding in which the orders were made under Rule 101 or 103. Since the appellant's suit was filed long after the commencement of the execution proceedings, the provisions of Rule 104 of Order 21 of the Code will not be apply to this case.

15. We cannot also find any fault with the views expressed by the High Court in relation to the provisions of Order 21, Rule 2 of the Code regarding adjustment of the decree in terms of an oral settlement alleged to have been arrived at between the parties on 21-2-1005. Furthermore, we also agree with the High Court that the burden of proving that the agreement relied upon by the appellants was manufactured had been wrongly shifted upon Respondent 1 in contravention of Section 103 of the Evidence Act, 1872. We, therefore, find no reason for disturbing the order of the High Court impugned in this appeal on any of the grounds urged on behalf of the appellant.

16. The appeal, therefore, fails and is dismissed, with cost assessed at Rs. 10,000.

15. For the foregoing reasons, the T.S. No. 4(H) 2012 of the Court of the Assistant District Judge, Shillong is not maintainable.

16. In the result, all the orders passed in the said T.S. No. 4(H) 2012 are hereby quashed. Accordingly, the revision petition is allowed.