
(1963) 01 AHC CK 0015
In the Allahabad High Court
Case No : Second Appeal No. 2643 of 1958

Shiva J. Maharaj Gauri Shanker Mahadeoji	APPELLANT
Vs	
Durga Prasad	RESPONDENT

Date of Decision : 10-01-1963

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3, 47

Citation : AIR 1964 All 37

Hon'ble Judges : R.S. Pathak, J

Bench : Single Bench

Advocate : S.B.L. Gaur and K.B.L. Gaur, for the Appellant;

Final Decision : Dismissed

Judgement

R.S. Pathak, J.—This is a decree-holder's appeal against an order passed by the learned Civil and Sessions Judge, Saharanpur holding that the decree for ejectment was not executable.

2. The appellant was the landlord of certain property of which the respondent was tenant, A suit was tiled by the appellant for ejectment and arrears of rent, and the said suit was decreed in terms of a compromise which contained the following terms:

"The suit is decreed for Rs. 987/8/- but dismissed regarding the relief for ejectment and the parties are to bear their own costs; in case the defendant does not pay the aforesaid amount by July 27, 1950 the suit will be considered to have been decreed for ejectment also and the plaintiff will be entitled to execute the decree for ejectment and arrears of rent."

3. It appears that the respondent defaulted in payment of the decretal amount and thereafter an execution application was filed against him by the appellant for arrears of rent and for ejectment. The respondent preferred an objection to the execution application inter alia on the ground that the decree was not executable as regards ejectment inasmuch as the condition relating to ejectment on default

of payment of the decretal amount was in the nature of a penal clause.

4. The objection of the respondent was rejected by the executing Court, but an appeal filed by the respondent was allowed by the learned Civil and Sessions Judge, Saharanpur who held that the stipulation regarding ejectment was in the nature of a penal clause and, therefore, the decree in that respect was not executable.

5. Learned counsel for the appellant has strenuously contended before me that the aforesaid stipulation as to ejectment was not in the nature of a penal clause. He urges that the suit was decreed for recovery of the amount of Rs. 987/8/- and for ejectment in case that amount was not paid by July 27, 1950. There is no force in this contention. The terms of the compromise, on which the decree was founded, plainly show that the only relief to be granted in the suit was that for the recovery of Rs. 987/8/-, there being a clear stipulation that the suit was to be dismissed as regards the relief for ejectment. From the terms of the compromise it cannot be said that the relief for ejectment was to be refused subject only to the payment of the amount by the date stipulates. That would be, if such construction were given, to alter the entire context in which the conditions of the compromise stood in relation to each other. The compromise provided that in case the defendant-respondent defaulted in payment of the amount the suit would be considered as having been decreed also for ejectment. The sense of the language indicates that although the decree for ejectment had not been granted in the suit, nevertheless on default of payment of the decretal amount the decree for ejectment would be treated as having been granted. From this, I have no hesitation in holding that the relief for ejectment was stipulated as a penal clause on default of payment of the decretal amount. It was intended to act as a coercive provision for the purpose of enforcing the terms agreed upon between the parties.

6. Learned counsel for the appellant has cited a decision of this Court in B. Kishen Prasad and Another Vs. Kunj Behari Lal. The terms of compromise in that case were, however, different. There although the amount claimed in the suit was Rs. 15,000/-, the plaintiff agreed by the compromise that if a certain amount was paid by certain dates he would remit the balance of his claim, but that in case there was a default in this behalf on the part of the defendant he would be entitled to recover the entire amount of his claim. It is apparent that a concession was offered by the plaintiff and that concession would be available only so long as the defendant complied with the stipulation which requires payment of the agreed amount by certain agreed dates. It was never the case merely that the plaintiff had agreed to a smaller amount. The plaintiff had agreed that if a certain smaller amount was paid in accordance with certain conditions he would abandon his claim to the balance.

7. In my opinion, therefore, this appeal has no force which is accordingly dismissed. Nobody appears for the respondent and, therefore, there shall be no order as to costs.