

(1996) 03 MP CK 0054

In the Madhya Pradesh High Court

Case No : Civil Revision No. 869 of 1995

Smt. Nathibai

APPELLANT

Vs

Maheshwari Samaj Ramola Trust and Others

RESPONDENT

Date of Decision : 22-03-1996

Acts Referred:

Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12, 13

Citation : AIR 1997 MP 19 : (1996) ILR (MP) 206 : (1996) JLJ 368

Hon'ble Judges : N.K. Jain, J;A.R. Tiwari, J

Bench : Division Bench

Advocate : S.C. Agarwal, for the Appellant; G.M. Chafekar and Vandana Kasrekar, for the Respondent

Final Decision : Dismissed

Judgement

A.R. Tiwari, J.—Undaunted by unsuccess in the Execution Court, the revisionist revigorates her claim, in this Court u/s 115 of the Code of Civil, Procedure (for short "the Code"), of immunity from eviction in execution of the decree of Competent Court, procured u/s 12(1)(a) of the M.P. Accommodation Control Act, 1961 (for short "the Act"), on the linchpin of deposit of all dues, as declared and decreed, in the Executing Court under the umbrella, deeming it protective in terms of Sections 13(I)(5)(6) and 12(3) of the Act, of the decisions of single Bench of this Court reported in 1988 Jab LJ 213 : 1987 MPRCJ 23 (Lachhobai Rathore v. Registered Shri Murti God Madan Mohan Maharaj) 1990 Jab LJ 434, (Phoolchand Jain v. Chhotelal) and 1994 Jab LJ 174 (Bhagwantdas Pawaiya v. Regd. Firm Kailash Narain and Bros.) and refuses to be dissented from the decretal accommodation.

2. Brief narrative of fasciculus of facts is that the non-applicant obtained the decree against Kanhaiyalal (since dead), husband of the applicant for eviction and recovery of rent/mesne profits from 1-1-1972 at the rate of Rs. 6/- per month in Civil Suit No. 198-A/ 75 from the Court of III Civil Judge, Class-II, Ratlam on 4-5-1976 u/s 12(1)(a) of the Act which was affirmed by the First

Appellate Court on 23-8-1977 and attained finality thereafter as no Second Appeal was preferred. Execution was levied on 3-11-1982 for warrant of possession and recovery of dues quantified at Rs. 885-25 Ps. Notice under Order XXI, Rule 22 of the Code was issued. The applicant as objector offered opposition on 27-2-1984. Application was filed on 23-6-1995 stating that all dues from 1-1-1972 to 31-12-1995 (Twenty four years), amounting to Rs. 1,728/- together with execution costs of Rs. 105/- (total Rs. 1,833/-) have been deposited in the Executing Court and as such no eviction can be ordered and no warrant, as claimed, can be issued. The objections were, however, dismissed and order to issue warrant of possession was passed on 14-8-1995. This order is challenged in this revision petition.

3. The matter was being heard by the single Bench. Further proceedings were put under "eclipse" by order dated 24-8-1995. On 4-1-1996, learned single Judge felt that this matter should be heard by a larger Bench and thus resorted to Rule 9(1) of Chapter-I of High Court Rules. Hon'ble the Chief Justice then on 14-2-1996 ordered placement of this case before Regular Division Bench.

4. The core question, falling for consideration, is whether the aforesaid decisions laid down the correct law and whether the applicant on deposit of entire dues secured freedom from eviction in execution of the final decree and whether order under impugned is not sustainable in law?

5. We have heard Shri S.C. Agrawal, learned counsel for the applicant and Shri G.M. Chaphekar, learned senior counsel with Ku. Vandana Kasrekar, for the non-applicants. The only point urged before us is that the order of issuance of warrant of possession merited to be mortalised, in the face of disappearance of default on deposit as stated above, on application of the decisions, noted herein before.

6. We proposed to examine the worth of the aforesaid point.

7. Before noticing relevant provisions, we deem it proper to take note of the impact and importance of administration of justice. In Parashuram Pottery Works Co. Ltd. Vs. Income Tax Officer, Circle I, Ward A, Rajkot, , the Supreme Court has observed that eventual goal of judicial proceedings is to attain finality. None should be kept lauged and locked in litigation for long years. The delivery system of social justice is intended to reach justice to the common man who, as the poet sang :--

"Bowed by the weight of centuries, he leans, upon his toe and gazes on the ground
The emptiness of ages on his face
And on his back the burden of the world."

8. The crucial aspect is whether decree of eviction gets annihilated on deposit of the dues in execution case at will? Can a decree be demolished in this manner? Do Sections 13(1)(5)(6) and 12(3) of the Act enure to the benefit of a judgment-debtor to call halt and retroject the course? In AIR 1977 SC 1201 (Sunder Dass

v. Ram Prakash), the Supreme Court held that "an executing Court cannot go behind the decree "nor can it question its legality or correctness". The only" exception to this general rule is challenged on the fulcrum of "nullity for lack of inherent jurisdiction in the Court passing it". And here the challenge is not on such exception. On Sermon that "to do a great right, do a little wrong". Portia retorted that-

"It must not be, there is no power in Venice -- that can alter a decree established."

9. As to interpretation of legal provision, Lord Denning to Seaford Court Estates v. Asher (1949) 2 All ER 155 observed that "A Judge must not alter the material of which the Act is woven but he can and should iron out the creases". Luculently, by interpretation process, basic structure cannot be destroyed. Material has to be preserved.

10. It is in the area of legislative ambiguities, yet not receding, that Courts have to fill gaps, clear doubts and mitigate hardships. In the words of Judge learned Hand, spoken in Gabell v. Markhan (1945) 148 F 2d 737, 739, we get enough light to locate correct path:--

"It is one of surest indexes of a mature and developed jurisprudence..... to remember that statutes always have some purpose or object to accomplish whose sympathetic and imaginative discovery is the surest guide to their meaning."

11. The stage is now set to notice relevant provisions.

(i) Section 12(1)(a) of the Act contains the ground of eviction as under:--

"12. Restriction on eviction of tenants.--(1) Notwithstanding anything to the contrary contained in any other law or contract, no suit shall be filed in any Civil Court against a tenant for his eviction from any accommodation except on one or more of the following grounds only, namely:

(a) that the tenant has neither paid nor tendered the whole of the arrears of the rent legally recoverable from him within two months of the date on which a notice of demand for the arrears of rent has been served on him by the landlord in the prescribed manner :"

(ii) Section 13(1) of the Act speaks of benefit of protection against eviction, as substituted by MP 27 of 1983 effective from 16-8-1983, in the under noted terms:--

"13. When tenant can get benefit of protection against eviction.--(1) On a suit or any other proceeding being instituted by a landlord on any of the grounds referred to in Section 12 or in any appeal or any other proceeding by a tenant against any decree or order for his eviction, the tenant shall, within one month of the service of writ, of summons or notice of appeal or of any other proceeding, or within one month of institution of appeal or any other proceeding by the tenant,

as the case may be, or within such further time as the Court may on an application made to it allow in this behalf, deposit in the Court or pay to the landlord, an amount calculated at the rate of rent at which it was paid, for the period for which the tenant may have made default including the period subsequent thereto up to the end of the month previous to that in which the deposit or payment is made; and shall thereafter continue to deposit or pay, month by month by the 15th of each succeeding month a sum equivalent to the rent at that rate till the decision of the suit, appeal or proceeding, as the case may be."

(iii) Section 13(5) of the Act fetters making of a decree or order for recovery of possession as under :--

"(5) If a tenant makes deposit or payment as required by Sub-section (1) or Sub-section (2), no decree or order shall be made by the Court for the recovery of possession of the accommodation on the ground of default in the payment of rent by the tenant, but the Court may allow such cost as it may deem fit to the landlord."

(iv) Section 13(6) of the Act confers discretion on the Court to forfeit defence against eviction as noted below:--

"(6) If a tenant fails to deposit or pay any amount as required by this section, the Court may order the defence against eviction to be struck out and shall proceed with the hearing of the suit, appeal or proceeding, as the case may be."

(v) Section 12(3) of the Act provides that :--

"(3) No order for the eviction of a tenant shall be made on the ground specified in Clause (a) of Sub-section (1), if the tenant makes payment or deposit as required by Section 13:

Provided that no tenant shall be entitled to the benefit under this Sub-section, if, having obtained such benefit once in respect of any accommodation, he again makes a" default in the payment of rent of that accommodation for three consecutive months."

(vi) Section 23 of the Act permits eviction as under:--

"23. Vacant possession to landlord.--Notwithstanding anything contained in any other law, where the interest of a tenant in any accommodation is determined for any reason whatsoever and any decree or order is passed by a Court under this Act for the recovery of possession of such accommodation, the decree or order shall, subject to the provisions of Section 16, be binding on all persons who may be in occupation of the accommodation and vacant possession thereof, shall be given to the landlord by evicting all such persons therefrom:"

(vii) Order XXI, Rule 11(2) of the Code envisages written application for the execution of the decree. Order XXI, Rule 35 of the Code permits Removal of any person bound by the decree who refuse to vacate the property.

12. It is thus clear that Section 13(1) of the Act requires the tenant to deposit or pay an amount calculated at the rate of rent at which it was paid and to continue to deposit or pay thereafter month by month by the 15th of each succeeding month a sum equivalent to the rent at that rate till the decision of the suit, appeal or proceeding, as the case may be. If the word "proceeding" is construed as including "execution" also, and this provision is held operative subsequent to passing of the decree for eviction also, then later part, as noted above, is rendered otiose as in execution no decisions to be taken and on deposit the executing proceeding will become insipid and decree will stand demolished at once for all time to come. To permit such a course is to alter the material which is just not permissible in law or logic.

13. We may focus attention on Section 13 of the Act further. It seems that the aforesaid decision 1987 MPRCJ 23 came to be rendered on the assumption that the word "proceeding" used in Section 13 of the Act was wide enough to include execution proceeding. In so doing, it is perhaps overlooked that the words used are "landlord" and "tenant". After passing of the decree, the parties cease to be landlord and tenant and become decree-holder and judgment-debtor. In our view, proceeding would and could mean the under-noted proceeding and not the execution proceeding :--

- (i) Suit dismissed for default and "restoration proceedings under Order 9, Rule 9 initiated by the landlord;
- (ii) Suit decreed ex parte against tenant and he initiated proceedings for setting aside such decree under Order 9, Rule 13;
- (iii) Revision petition filed by any of the parties in the High Court which may remain pending for any amount of time;
- (iv) A petition filed against any order by any party under Article 226 or 227 of the Constitution;
- (v) An appeal or revision filed against any interlocutory order made by the Court during trial of the suit."

We may add that this is the view also of the learned authors, M/s. S.D. Sanghi and M.L. Jindal, of the Act reprinted with supplement in 1995.

14. In further pursuit we may state that Section 141 of the Code commands that "the procedure provided in this Code in regard to suits shall be followed as far as it can be made applicable, in all proceedings in any Court of Civil Jurisdiction". By Explanation, inserted by Amendment Act, 1976, it is clarified that the expression "proceedings" includes proceedings under Order IX but does not include any proceeding under Article 226 of the Constitution. As held in *Dokku Bhushayya Vs. Katragadda Ramakrishnayya*, and based on that decision in single Bench decision 1978 (1) MPWN 326 (*Mohan Singh v. Shrikrishandas*), provisions are not applicable to execution proceedings. It is also laid down by Order XXII, Rule 12 of the Code that nothing in Rules 3, 4 and 8 of this Order shall apply to

proceedings in execution of a decree or order. It is thus manifest that execution proceedings are different in concept and content from other proceedings permissible under the law. Section 23-H of the Act contained in Chapter-III-A, and inserted with effect from 16-8-1983, lays down that the provision of Section 13 shall apply "mutatis mutandis" in respect of an application before Rent Control Authority. The expression "proceeding" thus covers such applications. Section 13 of the Act speaks of suit or any other proceeding on grounds referred to in Section 12 of the Act. In execution, there is no question of any proceeding on such ground.

15. So considered, we are of the opinion that the deposit of dues in execution or executing Court cannot have the potential to terminate the judicial decree required to be obeyed and executed.

16. The Supreme Court in Civil Appeal No. 226 of 1992, decided on 1-2-1995, set aside the order of the High Court and restored the decree passed by the trial Court u/s 12(1)(a) of the Act holding that "reliance on 1987 MPRCJ 23 (supra) and 1990 MPLJ 434 (supra) seemed to be totally out of place. We quote the operative part:--

"All that we can say will be that this reasoning is perverse. The orders in interlocutory applications can have no bearing on the main case nor can that amount to exercise the power u/s 12(I)(a). The reliance on the decisions of the High Court reported in 1987 MPRCJ 23 as well as in Phool Chand v. Chhotelal, 1990 MP LJ 434 seems to be totally out of place. The judgment of the High Court is set aside. The decree as passed by the trial Court confirming the order passed by the lower Court is restored. The appeal is allowed. No costs."

17. Now if waiver or condonation or deposit was not considered sufficient to annihilate the decree, then how deposit in executing Court can result in cessation of decree or immunity? It can thus be concluded that once the default has occurred on failure to pay or tender the whole of the arrears of the rent legally recoverable and deposit or payment is not made leading to the passing of the decree of eviction u/s 12(I)(a) of the Act, then any deposit or payment after passing of the decree as decretal amount in the, executing Court or to decree holder could confer no jurisdiction on the executing Court to treat the decree as unexecutable and grant immunity against eviction. The inhibition to go behind the decree cannot be sent on holiday. In our view on proper and harmonious consideration of Section 12(I)(a) along with Section 13(I)(5)(6) and Section 12(3) of the Act, default, after decree becomes inexcusable, uncondonable and incurable and later deposit thereafter is no answer to the decree of eviction. Executing Court has to execute the decree and cannot utter monosyllabic "no" to it.

18. Legislature in its wisdom did not elect to use expression like "execution proceeding" in Section 13 of the Act and deemed it fit to equate the proceeding with a suit as is manifested by the expression like "suit or any Other proceeding".

It is not open to Courts to curtail or enlarge the provision beyond obvious meaning. And interpretation has to carry the object and meaning without destruction. In *Ferguson v. Skrupa* (1963) 372 US 726, Mr. Justice Holmes is quoted as saying, that:--

"I think the proper course is to recognise that a State legislature can do whatever it sees fit to do unless it is restrained by some express prohibition in the constitution of the United States or of the State and the Courts should be careful not to extend such prohibitions"" beyond their obvious meaning by reading into them conceptions of public policy that the particular Court may happen to entertain."

We see no scope to entertain the conception that the aforesaid provision is intended to cover "executing proceeding". Let's not read in it what is not stated. The submission of counsel in thus meritless.

19. In *Lachhobai's case* (1988 MP LJ 213) (supra), the learned single Judge made a reference to *B.C. Kame Vs. Nemi Chand Jain*, . Power to extend time or condone the delay in deposits is not to be confused with the obligation execute and enforce the decree. Section 13(1)(5)(6) or 12(3) of the Act cannot be read differently and cannot be re-written. Judicial verdict, rendered by following statutory procedure, cannot suffer dent or death. Every provision in a statute has a purpose to "serve and a position to demarcate, procedure is to be followed. In *AIR 1990 SC 2660 (Chhetriya Pardushan Mukti Sangharsh Samiti v. State of U.P.)*, it is held that:--

"It is well settled that if there is a statute prescribing a judicial procedure governing a particular case, the Court must follow such procedure. It is not open to the Court to by pass the statute and evolve a different procedure at variance with it."

The aforesaid provisions do not go in deep slumber during the suit or appeal and do not and cannot spring into action after final decree for relief or redress. Such a burse as discussed above would be at variance with the statute. Let law and justice appear not as distant neighbors and let justice reach to the common man, adjudged a winner in a lis by decree, before he feels tired of waiting and disillusioned, "

20. Manifestly an erring tenant cannot plead ignorance and cannot, claim wisdom after suffering a decree. He or she cannot call in and what Gray spoke "on a Distant Prospect of Eton College"

"Where ignorance is bliss, Tt's folly to be wise".

One has to discharge one's, obligations as imposed by the statute. It is inutile and futile to imagine rights without discharge of responsibilities. These are two sides of a coin. The moment one ignores one side, one loses the coin itself. One is obliged to obey law and act when there is time to do so. There is no other golden rule. Bernard Shaw fittingly commented once that-- "The golden rule is

that there is no golden rule". It is thus crystal clear that decree cannot stand vanquished after finality just on belated deposit and executing Court acquires no power or jurisdiction to go behind the decree, record satisfaction and with hold warrant for possession. The Revision Petition is thus without vision arid conflicts with law and procedure.

21. On a careful consideration, we thus hold that 1988 MPLJ 213 : 1987 MPRCJ 23 (supra) does not lay down correct law and reiteration of same view in 1990MP LJ 434 (supra) on reliance of the aforesaid decision and later in 1994 MP LJ 174 (supra), on reliance of the above stated two decisions, to the extent of extinction of eviction decree on deposit of dues in executing Court is contrary to law. Accordingly we, with respect, over rule all these three single Bench decisions to this extent and declare that decree of eviction, passed by a Court of competent jurisdiction, remains valid for execution even after deposit or payment of dues which furnished live cause of action to pass such a decree under the Act. It thus follows that the executing Court has no jurisdiction to refuse to execute the decree or declare accord and satisfaction on deposit. The deposit satisfies the decree only in part so far as the decretal amount is concerned. Nothing more, and nothing less.

22. The deposit at execution stage thus brings no freedom from eviction and puts no dent on the decree. The order under challenge is found to suffer from no infirmity and is sustainable in law. No case is thus made out to warrant interference in little and limited scope u/s 115 of the Code. No other point was urged. "

23. It is not a palatable situation that the decree of 1976 still awaits execution. The objection is patterned on the adage "King of England is dead, long live the King". It is time to get rid of such contradiction and tp declare that execution of a valid decree should suffer no unwanted speed breakers in a surge Of an urge to check erosion in faith in the system. As noticed the execution case of 1982 is still under hibernation. This state is no good, nay is bad indeed.

24. Ex consequenti, we declare the legal position, uphold the order of executing Court and dismiss this revision petition but with no order as to costs. The order of stay now stands vacated. Return the record immediately.

25. We are informed that in several cases executing Courts are confronted with a problem in this regard. So we part with the record of this case; with the direction to the Registrar of this Court to forward immediately true copy of this order to District Judges of all districts of this Court requesting them to circulate the same to all Judges posted in their respective districts for prompt information of the position of law.