

(2010) 07 MP CK 0026
In the Madhya Pradesh High Court
Case No : Civil Rev. No. 116 of 2007

State Bank of India, Nagda

APPELLANT

Vs

Surajbai and others

RESPONDENT

Date of Decision : 06-07-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 23E, 23J

Citation : (2010) 4 MPLJ 118

Hon'ble Judges : Prakash Shrivastava, J

Bench : Single Bench

Advocate : K.N. Puntambekar, for the Appellant; A.S. Garg with Maqbool Ahmed Mansoori, for the Respondent

Judgement

Prakash Shrivastava, J.

This revision petition u/s 23-E of the M.P. Accommodation Control Act, 1961 ("Act" hereafter) has been filed challenging the order dated 7-3-2003 passed by the Court of Rent Controlling Authority, Khachrod, District Ujjain deciding the objection u/s 47 of the CPC ("Code" hereafter) and awarding compensation for the damages caused to the suit property.

The brief facts are that the petitioner was the tenant of the respondent in the suit premises. The application for eviction was filed by the respondent u/s 23-J of the Act on the ground of bona fide need and the Rent Controlling Authority had passed the eviction order dated 14-10-1998. The order of the Rent Controlling Authority was affirmed by the High Court by order dated 8-3-1999 passed in Civil Revision No. 159 of 1999 by directing the petitioner to hand over the vacant possession of the suit premises within one year. In Misc. Civil Case No. 97 of 2000 filed by the petitioner, the time for vacating the suit premises was extended up to 30-6-2000. The petitioner on 30-6-2000 deposited the keys of the suit premises in the Court after vacating it.

The respondent had filed application u/s 47 of the Code alleging that before vacating the suit premises the petitioner had caused extensive damage to suit premises. The respondent had given the telegraphic notice dated 26-6-2000 even thereafter the ground floor portion of the building was damaged by the petitioner. He alleged that the channel gate, fitting and fixtures, water motor pump, fans etc. provided by the respondent were taken away by the petitioner after removing them. The respondent claimed damages to the tune of Rs.3.00,000-00 pleading that such a claim falls within the meaning of execution, discharge and satisfaction of the decree u/s 47 of the Code. The application was opposed by the petitioner. The Executing Court had got the spot inspection done and recorded the evidence of the parties and thereafter passed the order dated 7-3-2003 holding that the respondent was entitled to the compensation for damages to the tune of Rs. 2,00,000-00.

Learned Counsel appearing for the petitioner submitted that u/s 23-A of the Act the Rent Controlling Authority only had the jurisdiction to decide the dispute relating to eviction and it cannot award any compensation for damages. He submitted that the Rent Controlling Authority cannot exercise the power u/s 47 of the Code since it is not a Civil Court and, therefore, the impugned order is without jurisdiction. He also submitted that the compensation awarded by the Rent Controlling Authority is on the higher side.

Learned Counsel appearing for the respondents referring to the scheme of the Act submitted that the Rent Controlling Authority has all the powers of the Civil Court to execute the decree and decide objection u/s 47 of the Code and no error has been committed by the Rent Controlling Authority in granting compensation.

I have heard Learned Counsel for the parties and perused the record.

Under section 35 of the Act, the order passed by the Rent Controlling Authority is executable by the Rent Controlling Authority as a decree of Civil Court and for this purpose the Rent Controlling Authority has all the powers of a Civil Court. Section 35 of the Act in clear terms provides that :-

35. Rent Controlling Authority to exercise powers of Civil Court for execution of other order.- Save as otherwise provided in section 34, an order made by the Rent Controlling Authority or an order passed in appeal under this Chapter or in a revision under Chapter III-A shall be executable by the Rent Controlling Authority as a decree of a Civil Court and for this purpose, the Rent Controlling Authority shall have all the powers of a Civil Court.

Thus, the submission of the counsel for the petitioner that the Rent Controlling Authority while executing its order does not have powers of the Civil Court is unfounded and contrary to the expressed provisions of section 35 of the Act.

On passing of decree of eviction, it is the duty of the tenant to hand over the vacant possession of the suit property in the same condition to the landlord as existing at the time of passing of decree and on the basis of the eviction decree

landlord is entitled to receive the suit property without any damage being caused subsequently. If the tenant causes any deliberate damage to the suit property after passing the eviction decree, then he is liable to compensate the landlord for such a damage caused by him so that the suit property can be restored in its original position relatable to the date of decree. If during the execution of the decree any such dispute arises, then such a dispute falls within the meaning of execution, discharge or satisfaction of the decree as provided u/s 47 of the Code and such a dispute can be decided by the Court executing the decree and not by a separate suit.

The aforesaid view is supported by the judgment of this Court in the matter of Damodar Gopalji and another vs. Suganmal Mannalal and another, reported in 1959 MPLJ 164, where the similar dispute had arisen in respect of the damage caused to the property for which a pre-emption decree was passed and the Executing Court had rejected the application u/s 47 of the Code for compensation holding that the question of compensation claimed by the decree holder was not the one relating to the execution, discharge or satisfaction of the decree. this Court in the matter of Damodar Gopalji and another (supra) held that :-

In my judgment, the view taken by the Courts below is wrong and this appeal must be allowed. The question whether the decree holder can in execution claim compensation for the damage done to the property by the judgment-debtor obviously turns on the question whether the claim is a matter relating to the execution, discharge or satisfaction of the decree within the meaning of the words as used in section 47, Civil Procedure Code. The pre-emption decree gave to the appellants the possession of the property in suit on their paying Rs. 3,344-12-3. Under that decree the appellants were entitled to get the property in suit in the condition in which it was at the time of the passing of the decree. The judgment-debtor were, therefore, under an obligation to deliver the property to the decree-holders in the same state without doing any damage to it or committing any waste. The question, therefore, of any change, or alteration in the property, or deterioration caused by any act of the judgment-debtor after passing of the decree would clearly be one relating to the execution, discharge or satisfaction of the decree and has to be enquired into by the Court executing the decree u/s 47 of the Civil Procedure Code. In this connection, it would be pertinent to refer to the observations of the Supreme Court in para 23 of the judgment in Jai Narain vs. Kedar Nath (1) that the Executing Court has to see that the defendant gives the plaintiff the very thing that the decree directs and not something else, so if there is any dispute about its identity or substance nobody but the Court executing the decree can determine it. These observations placed beyond doubt the position that where, as in the present case, the holder of a decree for possession of property complains of any alteration, deterioration or damage done to the property by the judgment-debtor after passing of the decree, it is only the executing Court that can enquire into the complaint.

A similar view was taken in Hari vs. Sakham (2) where a person had obtained

a decree for possession of certain property and the judgment-debtor had committed waste by cutting down trees after the passing of the decree. It was held that the question with regard to the waste committed by the judgment-debtor in possession of the property" after the passing of the decree is a question arising between the parties relating to the execution, discharge or satisfaction of the decree and that if the property has depreciated in value or been damaged since the decree, owing to the wilful action of the defendants, it is a question in execution whether the defendants are liable to make good the loss. The decision of the Bombay High Court was followed in (Rajah Bahadur Dhanarajagerji vs. Rajah Panuganti Parthasarathy Rayanim Varu (1), K.N. Varadaraja Ayyar vS.K. N Paramaswara Ayyar (2) and Mst. Phool Kuer vs. Manohar (3). In these cases, it has been held that the executing Court cannot refer the decree holder, who complains that the property at the time of his obtaining possession over it, was not in the same state in which it was at the time of the decree and had deteriorated, to file a regular suit to recover damages for the deterioration. The Courts below were, therefore, not right in rejecting the decree holders" claim for compensation in respect of the damage alleged to have been done by the judgment-debtor.

The similar issue in respect of an eviction matter had come up before this Court in the matter of Prakashchandra vs. Gyanchand, reported in 1985 MPWN 739, Note No. 586, wherein this Court held that :-

The judgment-debtor has to deliver the possession of the decretal, premises in the condition they were at the time of the passing of the decree and if the judgment-debtor has done any act on account of which the value of the decretal premises has depreciated he is found to make good the loss caused by him to the decree-holder and this matter can be enquired into in the execution proceedings. In Poomalai Vs. Ramalingam, the Madras High Court has held that on the passing of a decree for the possession of the property, the judgment-debtor is under liability to hand over possession of the property as it was on the date of the decree. If at the time of the delivery it is found that the property decreed has depreciated in value by the positive and wilful conduct of the judgment-debtor then the question how for the judgment-debtor will be liable for causing such depreciation in the value of the property can be dealt with as an issue existing in execution, as it falls, within the scope of the expression discharge or satisfaction of the decree. Similar view was taken by the Rajasthan High Court in Jugal Kishore vs. Deo Narayan (1983 1 All IRCJ 696) and by the Bombay High Court in Bai Lalbu Vs. Mohanlal Gokaldas Javeri, , I am in respectful agreement with the view taken in the aforesaid decisions. The executing Court was, therefore, bound to consider the question raised by the decree-holders that the judgment-debtor has caused damage to the decretal premises and to adjudicate upon the liability of the judgment-debtor in that regard.

Learned Counsel for the petitioner has placed reliance upon the judgment of the

Supreme Court in the matter of Jai Narain Ram Lundia Vs. Kedar Nath Khetan and Others, , but the said judgment does not help the petitioner since the Supreme Court has also held that the Executing Court has to see that the judgment-debtor gives the decree-holder the very thing that the decree directs and not something else, so if there is any dispute about its identity or substance, nobody but the Court executing the decree can determine and it is a matter distinctly relating to the execution, discharge and satisfaction of the decree falling u/s 47 of the Code.

Learned Counsel appearing for the petitioner has also relied upon the judgment of the Supreme Court in the matter of State of M.P. Vs. Mangilal Sharma, , but the said judgment has no application in the facts of the present case since in the said judgment the original Court in the case of a Government Servant had only granted the relief of continuance in service but the Executing Court had granted the relief of arrears of salary and interest on arrears not claimed, travelling beyond the decree, which was disapproved by the Supreme Court. But in the present case the respondent-decree holder is claiming the restoration of the possession of the suit property in the same position in which he is entitled as per law.

Counsel for the appellant has also relied upon the judgment of this Court in the matter of D. R. Jha and another vs. Shri Ram Sharma and others, reported in 1986 MPLI 411, but that judgment is on different issue in respect of jurisdiction of the Rent Controlling Authority to grant decree only on the ground of bona fide requirement and not on the ground of arrears of rent. In the present case the eviction decree is on the ground of bona fide need.

Thus, it is held that the Rent Controlling Authority has all the powers of the Civil Court to execute the decree and it has rightly decided the issue of grant of compensation to the respondent for the deliberate damages caused by the petitioner to the suit property after passing of decree of eviction and such an order granting compensation for damage can be passed by Rent Controlling Authority while deciding the objection u/s 47 of the Code relating to the execution, discharge and satisfaction of the decree.

Learned Counsel appearing for the petitioner has also challenged the quantum of compensation awarded by the Rent Controlling Authority. A perusal of the impugned order indicates that the respondent had produced the evidence before the Rent Controlling Authority to establish that extensive damage to the suit property was caused by the petitioner while vacating the suit property. The petitioner also, in its objection to the spot inspection report, had admitted some of the damages caused by the petitioner to the suit property. The Executing Court has found that the fixtures and fittings which the petitioner had removed and taken away from the suit premises were provided by the respondent and the petitioner after passing of the eviction decree had caused damage to the suit property by acting in an irresponsible manner. To ascertain the extent of the damages caused and to quantify the compensation, the Executing Court had

appointed the Commissioner for spot inspection and after taking into consideration the report of the Commissioner and all other relevant evidence on record, the Executing Court has rightly quantified the compensation of Rs. 2,00,000-00.

Thus, I do not find any merit in the revision petition. The impugned order of the Rent Controlling Authority is neither illegal nor it suffers from any jurisdictional error. The revision petition is accordingly dismissed. No order as to costs.