
(2012) 08 JH CK 0102
In the Jharkhand High Court
Case No : Writ Petition (C) No. 580 of 2012

State of Bihar (Now Jharkhand) and Others	APPELLANT
Vs	
Samrendra Kumar Dutta	RESPONDENT

Date of Decision : 07-08-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47, 47(1), 80

Citation : (2012) 08 JH CK 0102

Hon'ble Judges : P.P. Bhatt, J

Bench : Single Bench

Advocate : Sirjeet Choudhary, for the Appellant; R.A. Chamaria, for the Respondent

Final Decision : Dismissed

Judgement

P.P. Bhatt

1. The present petition has been filed against the order dated 29.11.2006 passed by learned Sub-Judge-I, Dhanbad in Misc. Case No. 7 of 2002 arising out of Execution Case No. 7/1997 in the Court of Sub-Judge-I, Dhanbad. Heard the learned counsel for the parties and perused the impugned order.

2. The short facts of the case is as under:-

The plaintiff-respondent has filed Money Suit being Money Suit No. 50/1983 before the learned Sub-Judge-I, Dhanbad against the petitioners seeking relief for a decree of Rs. 1,07,287/- along with 6% pendente lite and future interest. The case of the plaintiff is that during 1980 Assembly Election the plaintiff was asked to carry out work in terms of officer order of the SDO, Dhanbad for decorating Pandal and Dais for supplying other allied materials for the purpose of 1980 Assembly Election for the period 24.5.80 to 3.6.80 in the police line Dhanbad and as per instruction of the SDO, Dhanbad, the plaintiff had constructed the Pandal and supplied all the materials such as Chairs, Tables, Light, Mikes and Petromax etc..

3. It is the case of the plaintiff that the said work was done under the supervision of Sergeant Major of Police Line, Dhanbad, who had also taken necessary measurement and had given certificate in respect of compliance of the said decoration work. The plaintiff submitted a bill of Rs. 90,907/- to the SDO, Dhanbad but the said bill was not honoured and payment was not made and therefore, the plaintiff compelled to file the suit for recovery of the said bill amount along with interest @ 6%. The said suit was instituted after service of notice u/s 80 of the CPC. Since defendant State did not appear in the proceeding, the suit was proceeded ex parte and ultimately decreed by the judgment and order dated 14.2.1992. Thereafter, the plaintiff-respondent had filed the execution case being Execution Case No. 01/1993, which was dismissed on 21.3.1997. On dismissal of earlier execution case, plaintiff-respondent filed another execution case being Execution Case No. 7/1997 for executing the decree passed in money suit No. 50/1993 and for realization of a sum of Rs. 1,97,408/- out of which, Rs. 1,07,287/- was the decretal amount and the remaining Rs. 97,121/- was the interest calculated up to date @ 6% interest. Thereafter on notice, the petitioner-judgment debtor appeared before the Executing Court of Sub Judge-I, Dhanbad and filed application u/s 47 of the C.P.C. Objecting the maintainability of the execution case inter alia on the ground that the Second Execution Case No. 7/97 was not maintainable because the earlier execution case No. 1/93 was dismissed on 21.3.1997. On the application of the petitioner-judgment debtor, a Miscellaneous Case 7/02 was instituted and respondent-decree holder was asked to submit its reply. Accordingly, the respondent submitted its reply inter alia supporting the maintainability of the execution proceeding. The petitioner-judgment debtor also had examined three witnesses in support their contention. Thereafter the matter was heard by the learned sub-Judge-I, Dhanbad and an application u/s 47 C.P.C. filed by the petitioner was dismissed vide order dated 29.11.2006 on the ground that the application u/s 47 of the CPC was not maintainable and the Execution Case filed by the decree-holder is maintainable. The court further held that the Executing Court is empowered to execute the decree and is not supposed to go beyond decree.

4. On perusal of the order dated 20.11.2006 passed by the Court below in Misc. Case No. 7/02, it appears that the Court below has passed the said order after careful consideration of the submission made by the present petitioner as well as Opp. Party. It appears that the court below has passed the said order after careful consideration of the provisions contained in Section 47 C.P.C., As discussed above, the money decree passed by the competent court having jurisdiction was before the executing court for its execution. The earlier execution proceeding filed by the judgment creditor was dismissed for want of prosecution and therefore there was no adjudication on merit and therefore, the judgment creditor has filed another execution proceeding for execution of the said money decree. The point raised by the present petitioner that the said money decree was passed ex parte without affording an opportunity to the

defendant has been rightly and properly appreciated by the court below while dealing with the said application filed u/s 47(1) of the C.P.C. The executing court has to execute the decree passed by the competent Civil Court and the executing Court can not go beyond the decree. The contention raised by the present petitioner can be raised by them by way of filing proper proceeding, so far as application u/s 47(1) CPC is concerned. The view expressed and taken by the learned court below is appears to be in consonance with the provisions of Section 47(1) CPC. Since there was no decision on merit in Execution Case, principle of res judicata shall not be applicable and, therefore the court below has rightly and properly considered the issue involved in this case. Therefore this Court is of the view that the learned Court below has not committed any irregularity and illegality while passing the order impugned and therefore, the intervention of this Court is not called for. Having regard to the aforesaid discussion, the present writ petition is liable to be dismissed. Accordingly, this writ petition is dismissed.