
(2013) 12 GUJ CK 0099
In the Gujarat High Court

Case No : Civil Revision Application No. 40 of 2013

The District Development Officer and Another

APPELLANT

Vs

M/s. V.K. Patel and Co.

RESPONDENT

Date of Decision : 24-12-2013

Acts Referred:

Citation : (2013) 12 GUJ CK 0099

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : Mehul S. Shah for Ms. Khyati P. Hathi, s No. 1-2, for the Appellant;
K.G. Sukhwani, Advocate for the Opponent(s) No. 1, for the Respondent

Final Decision : Allowed

Judgement

Abhilasha Kumari, J.—Rule. Mr. K.G. Sukhwani, learned advocate, waives service of notice of Rule on behalf of the respondent. On the facts, and in the circumstances of the case, and with the consent of learned counsel for the respective parties, the application is being heard and decided finally.

2. The present Revision Application u/s 115 of the Code of Civil Procedure, 1908 ("the Code" for short) has been preferred, inter-alia, with a prayer to quash and set aside the order dated 16.01.2013, passed by the learned Principal Senior Civil Judge, Jamnagar, ("the Executing Court" for short) below the application at Ex. 6 in Civil Special Execution Application No. 6 of 2009.

3. Briefly stated, the relevant facts of the case are that the respondent herein filed the above-mentioned Execution Application against the present applicants on 05.02.2009, arising from a decision given by an Adjudicator on 27.10.2008, for payment of money. The applicants filed their objections to the same. They also filed an application at Ex. 6 for rejection of the Execution Application under Order 7 Rule 11 of the Code on 16.03.2009 on the ground that the Execution Application lacks cause of action and is premature. The respondent contested the application at Ex. 6 by filing a reply thereto at Ex. 9 on 07.01.2010. The

Executing Court rejected the application on the ground that it cannot go beyond the decree. According to the applicants, this order was passed without granting them a proper opportunity of hearing in view of the fact that the matter was originally posted for hearing on 29.01.2010, but in fact, was listed on another date. The applicants, therefore, filed the application at Ex. 11, on 07.01.2010 itself, for reviewing the order passed below Ex. 6. After hearing the parties, the Executing Court granted the application at Ex. 11 for review, wherein the applicants had prayed that they may be heard and the order passed below Ex. 6 may be suspended, till such time, as the opportunity of hearing is given to them. This application was allowed by the Executing Court on the same day, that is, 07.01.2010. The grievance of the applicants is that despite the passing of the order dated 07.01.2010, below Ex. 11, the Executing Court has rejected the application at Ex. 6, on the ground that the application does not fall within the purview of review jurisdiction, without granting them an opportunity of hearing. It is this order, dated 16.01.2013, passed below Ex. 6, that is impugned in the present application.

4. Mr. Mehul S. Shah, learned advocate appearing for Ms. Khyati P. Hathi, learned advocate for the applicants, has submitted that the Executing Court has materially erred in failing to exercise the jurisdiction vested in it by law. By passing the impugned order, it has exercised jurisdiction illegally and with material irregularity.

4.1 That the Executing Court has erred in overlooking the fact that the application at Ex. 11 had already been granted, therefore, the application at Ex. 6 was required to be decided on merits, after hearing the parties. However, the said application has been rejected by the impugned order, without entering into the merits of the matter.

4.2 That the Executing Court has further erred in recording the finding that the earlier order dated 07.01.2010, passed below Ex. 6, cannot be reviewed as there is no error in the said order as the application had been decided on merits. The Court has lost sight of the fact that the said order had been passed behind the back of the applicants, without affording them an opportunity of hearing.

4.3 That as per the provisions of Order 47 Rule 8 of the Code, where an application for review is granted, a note thereof is to be made in the Register and the Court may at once re-hear the case or make such order in regard to the re-hearing as it thinks fit. As the application at Ex. 11 was granted, the application under Order 7 Rule 11 was required to be re-heard, which has not been done.

5. Mr. K.G. Sukhwani, learned advocate for the respondent, has submitted that the earlier order passed by the Executing Court below Ex. 6, dated 07.01.2010, was on merits, therefore, the Court has observed in the impugned order dated 16.01.2013 that the said order does not require any interference.

6. This Court has heard learned counsel for the respective parties, perused the averments made in the application, contents of the impugned order and other

documents on record.

7. It is not disputed that the earlier order passed below Ex. 6, in Civil Special Execution Application No. 6 of 2009, dated 07.01.2010, had not been passed without granting a proper opportunity of hearing to the applicants. The matter was originally posted for hearing on 29.01.2010. However, the matter was preponed without notice to the applicants and was decided on 07.01.2010. The applicants were unable to appear before the Executing Court in view of the preponement of the hearing. They had no notice before the passing of the said order. After the order dated 07.01.2010 was passed, the applicants came to know of it. They at once filed the application at Ex. 11, requesting the Executing Court to keep the said order in suspension, and to review the same as they had not been heard. This application has been granted by the Executing Court vide order dated 07.01.2010. The grievance of the applicants is that while passing the impugned order, the Executing Court has rejected the application on the ground that it does not fall within the ambit of review, without entering into the merits of the matter. The learned advocate for the applicants has submitted that having granted the application at Ex. 11, the Court ought to have gone into the merits of the case as it had already granted the prayer of the applicants for review of the order as made in Ex. 11. There appears to be considerable substance in the above submissions advanced on behalf of the applicants.

8. A perusal of the impugned order goes to show that while rejecting the application at Ex. 6, on the ground that it does not fall within review jurisdiction, what has weighed with the Executing Court is the earlier order dated 07.01.2010, passed below Ex. 6 which, according to it, has been passed on the merits of the matter. However, the said Court has lost sight of the fact that the earlier order was passed without granting the applicants an opportunity of hearing. It cannot, therefore, be said to have been passed in accordance with law. By granting the application at Ex. 11, the Executing Court had itself suspended the said order, while granting the review application filed by the applicants. Under such circumstances, the conclusion arrived at by the Executing Court in the impugned order, to the effect that the application does not fall within review jurisdiction, appears to be a result of an improper exercise of jurisdiction vested in it.

9. For the above reasons, as this Court is of the view that the jurisdiction vested in the Executing Court has not been exercised in a proper manner, the application deserves to be allowed. Hence, the following order:

The order dated 16.01.2013, passed by the learned Principal Senior Civil Judge, Jamnagar, below the application at Ex. 6, in Civil Special Execution Application No. 06 of 2009, is quashed and set aside. The matter is remanded to the Executing Court with a direction that Ex. 6 be decided afresh, after granting the parties an opportunity of hearing. Thereafter, the Executing Court shall pass an order, in accordance with law, on the merits of the case on, or before, 31.03.2014.

Rule is made absolute, in the above terms.