

(1996) 03 RAJ CK 0027

In the Rajasthan High Court

Case No : Civil Miscellaneous Application No. 133 of Second Appeal No. 62 of 1996

Zaffar Hussain and Others

APPELLANT

Vs

Gurcharan Lal Bhatia and Another

RESPONDENT

Date of Decision : 04-03-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 151

Citation : (1996) 3 WLC 108 : (1996) 1 WLN 408

Hon'ble Judges : R.R. Yadav, J

Bench : Single Bench

Judgement

R.R. Yadav, J.—Heard.

2. The tenant-defendant-appellants have moved the present application u/s 151, C.P.C. for stay of execution of the decree affirmed by this Court on 25.3.1996 in Second Appeal on the ground that the tenant-appellants Intend to prefer SLP before the Hon"ble Supreme Court within a shortest possible time for which at least 60 days" time would be required to file the said appeal.

3. In fact, the aforesaid application moved u/s 151, CPC is misconceived, Inasmuch as, there are clear provisions under Sub-section (9) of Section 13 of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (hereinafter referred as the Act of 1950"), which clearly provides that where any decree for eviction of a tenant Is made on the ground specified In Sub-section (1) of Section 13 of the said Act, the landlord shall not be entitled to obtain possession thereof before the expiry of two months from the date of such decree. In view of the aforesaid mandatory provisions contained under Sub-section (9) of Section 13 of the Act of 1950, the residuary provisions contemplated u/s 151, CPC cannot be pressed Into service. In fact, the provisions of Sec, 151, CPC can be pressed Into service where there is no express provision to meet a contingency.

4. Learned counsel for the landlord-plaintiff-respondents Mr. Rajendra Mehta

submits that expression "decree" used under Sub-section (9) of Section 13 of the Act of 1950 has nexus with the decree for eviction of a tenant passed by a trial court only.

5. I am not able to persuade myself to agree with the aforementioned argument of the learned counsel for the appellants for the reason that doctrine of merger is applicable in such decrees. Whenever and wherever appeals are preferred against decrees for eviction of tenants passed by trial courts to higher courts such decrees are always subject to modification, variation and reversal by such higher courts in hierarchical order. Since the present Second Appeal was dismissed by this Court on 25.3.96, therefore on the basis of principle of merger, two months time is to be computed from 25.3.1996.

6. There is yet another reason to arrive at the aforesaid conclusion. The expression "decree" occurring under Sub-section (9) of Section 13 of the Act of 1950 is not referable to a decree passed by a trial court or where an appeal has been preferred to an appellate-decree, therefore, the word "decree" means a decree by a court which disposes of the suit finally whether it is trial court or appellate court. It is well-settled principle of law that when a trial court decrees a suit and the decree is challenged by filing a competent appeal in such a situation, the appeal is considered as continuation of the suit and when the appellate decree affirms, modifies or reverse the decree on merits, the trial courts' decree is said to merge in the appellate decree and finally it is appellate decree, which is executable in law.

7. In my considered opinion, the limitation of two months as envisaged under Sub-section (9) of Section 13 of the Act of 1950 is to be computed from the date when a decree for eviction of a tenant passed by a trial court attains finality and becomes executable.

8. Learned counsel for the land lord plaintiff-respondents Mr. Rajendra Mehta strenuously urged that if Sub-section (9) of Section 13 of the said Act is interpreted so, then mere filing of an appeal would tantamount stay of execution of decree for eviction of a tenant passed by the learned trial court, which would run counter to the letter and spirit of the said Section. In support of his aforesaid contention, Mr. Mehta placed reliance on a decision rendered by the Apex Court in the case of Lakshmi Narayan Guin and Others Vs. Niranjan Modak, . The aforesaid apprehension of the learned counsel for the respondents is unfounded and as such not tenable. A decree for eviction of a tenant passed by a trial court or lower appellate court on the ground specified under Sub-section (1) of Section 13 of the Act of 1950 shall remain stayed for a period of two months only as contemplated under Sub-section (9) of Section 13 of the said Act and immediately thereafter it becomes executable unless a stay order is obtained from the appellate court within the meaning of Order 41, Rule 5, C.P.C.

9. Indisputably, the provisions of CPC are made applicable to a decree for eviction of a tenant passed on the ground specified in Sub-section (1) of Section

13 of the Act of 1950, therefore, on the basis of a decree for eviction of a tenant passed by the trial court, a landlord shall not be entitled to obtain possession of the premises whether residential or commercial before the expiration of two months from the date of such decree but Immediately after expiry of two months period, such decree passed by the trial court would become executable even if such decree or order is challenged before a competent appellate court by way of filing an appeal unless a stay order is obtained from such appellate court as contemplated under Order 41, Rule 5, CPC. It is to be noticed that mere filing of an appeal against a decree, does not amount stay of execution of a decree within the meaning of Order 41, Rule 5, CPC unless the appellate court for sufficient cause orders stay of execution of such decree.

10. The aforesaid procedure mutatis mutandis would apply in case a Second Appeal u/s 100, CPC is preferred against the decree passed by the lower appellate court. It is made clear that from the date of decree for eviction of a tenant passed by the lower appellate court for a period of two months, the landlord shall not be entitled to obtain possession of the premises but immediately after expiration of two months from the date of such decree, he would become entitle to obtain possession of the premises provided a tenant has not obtained a stay of execution of such decree from the High Court as envisaged under Order 41, Rule 5, CPC.

11. Although the decision rendered by the Supreme Court in the case of Lakshmi Narayan Guin (supra) has no direct bearing on the point in issue yet my aforesaid views on the points of principle of merger and an appeal as continuation of a suit, which are relevant consideration and have also telling effect for correct Interpretation of Sub-section (9) of Section 13 of the Act of 1950, are fortified from the aforesaid decision.

12. With the aforesaid observations, the present application filed u/s 151, CPC is hereby disposed off.

13. After dictation of order, learned members of the Bar present in Court make a request to make the order "Reportable". Request is allowed and the order is made "Reportable".