

Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

CRP No. 19 of 2018

Date of Decision: 10.10.2023

Smti Taxly Noris Suting

Vs.

Smti Rishalin Mukhim

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner(s)

:

Mr. M.F. Qureshi Adv. with
Ms. K. Chisa, Adv.

For the Respondent(s)

: सत्यमेव जयते

Mr. K.S. Kharshiing, Adv.

i) Whether approved for reporting in
Law journals etc.

Yes/No

ii) Whether approved for publication
in press:

Yes/No

JUDGMENT AND ORDER

1. This application under Article 227 of the Constitution of India has been filed for declaring the Judgment and Order dated 28.08.2015 passed by the Sub-ordinate District Council Court, Shillong as inexecutable and as a nullity in the eye of law and also for setting aside the order dated 12.04.2018 passed in MCA No. 17

of 2012 passed by the Judge, District Council Court and also the order dated 16.05.2018 passed in Review Misc. Case No. 1 of 2017 by the Additional District Council Court, Shillong. Further prayer has been made for quashing the entire Execution proceedings being Execution Case No. 3 of 2015, re-numbered as Execution Case No. 1 of 2018, pending before the Executing Court/Sub-ordinate District Council Court, Shillong.

2. The brief background of facts is that the mother of the respondent since deceased, instituted a Suit being Ejectment Suit No. 1 of 2010, before the District Council Court against the petitioner seeking the eviction of the petitioner from the suit property in question. The Ejectment Suit was not contested by the petitioner, ostensibly for the reason that the engaged counsel had withdrawn himself from the case, and as such by order dated 26.09.2011 the same was ordered to proceed ex parte. The plaintiff and the witnesses then completed their depositions by November 2011, and after filing of written arguments on May 2012, the Suit was reserved for pronouncement of final Judgment and Decree. It appears that on the withdrawal of vakalat by the earlier counsel and on receipt of notice from the Court, the petitioner entered

appearance and filed a petition for vacating, and for setting aside of the order for ex parte hearing dated 26.09.2011. The same then came to be dismissed vide order dated 04.09.2012. It is worthwhile to note that in the intervening period, while awaiting the pronouncement of the Judgment and Decree, the original plaintiff died, and a substitution application was then filed by the respondent being petition No. 324 of 2012. The petitioner against the dismissal of the petition for setting aside the order for ex parte hearing, then preferred a Misc. Civil Appeal being MCA No. 17 of 2012 before the First Appellate Court i.e. the Court of the Judge, District Council Court, which after hearing the parties, dismissed the appeal by order dated 03.04.2014, and upheld the order dated 04.09.2012.

3. The learned Trial Court by Judgment and Decree dated 28.08.2015, then decreed the Ejectment Suit No. 1 of 2010 in favour of the respondent, whereafter the respondent/decreed holder filed an Execution Case being No. 3 of 2015 before the Trial Court for Execution of the Judgment and Decree dated 28.08.2015. The petitioner then preferred a revision petition being CRP No. 6 of 2016, challenging the ex parte judgment on the issues of abatement

and substitution. Clarification was then sought by this Court, and on the same being furnished that a substitution had indeed been filed, this Court then by order dated 13.06.2017, remanded the matter back to the District Council Court for adjudicating the same. It appears that the question of substitution, had been re-agitated by the respondent, which had taken up the matter and the petitioner, in spite receipt of notice and though given several opportunities, did not raise any objection against the same, and the substitution was allowed on 07.02.2017. The order dated 07.02.2017, as it appears from the records was never challenged by the petitioner. Misc. Civil Appeal 17 of 2012, filed against the order of ex-parte hearing was thereafter taken up for consideration by the Judge, District Council Court and the petitioner despite receipt of notice, failed to appear and as such by order dated 12.04.2018, MCA No. 17 of 2012 was dismissed, and the records was then endorsed to the Sub-Ordinate District Court, for execution. The petitioner then filed a Review being Review Misc Case 1 of 2017, wherein the Court below affirmed the Judgment and Decree by order dated 16.05.2018. This was again followed by an application which appears to have been filed sometime in June 2018, in the Execution

Case, wherein the petitioner sought for dismissal of the Suit, which however was not entertained.

4. The petitioner has now preferred this revision under Article 227 of the Constitution of India, seeking interference on the ground that the Suit should have abated, as substitution was not effected in the correct procedure.

5. Heard learned counsels for the parties.

6. Mr. M.F. Qureshi, learned counsel for the petitioner has sought to impress upon this Court the factum of procedural laches by submitting that there has been irregularity in the proceedings before the Courts below, which has occasioned miscarriage of justice and has highlighted the orders dated 03.04.2014 passed by the Judge, District Council Court as also the order dated 12.04.2018 passed by the Additional Judge, District Council Court, which he contends have effectively taken away the petitioner's right under Section 47 CPC.

7. Mr. K.S. Kharshiing, learned counsel for the respondent has submitted that the instant case is a classic case of the deprivation of the fruits of litigation on a judgment and decree which had been passed as far back as on 28.08.2015, in favour of

the respondent/plaintiff in Ejectment Suit No. 1 of 2010. On the question of abatement, it has been submitted that during pendency of the judgment and order after the proceedings had been completed, the factum of the death of the original plaintiff had already been brought on record and was also taken up by the Court and that the petitioner/judgment debtor in spite of receipt of notice, never raised any objection to the same. He further submits that the petitioner by her own conduct has waived whatever right or remedy she might have possessed, as is evident from the order dated 07.02.2017, passed in Misc. Case No. 18 of 2016, wherein the petitioner had not appeared and substitution was allowed. Similarly, it is submitted by order 12.04.2018 passed MCA No. 17 of 2012, on the non-appearance of the petitioner, the Execution case was then endorsed to the Sub-ordinate District Council Court for execution. It is finally contended that substantive procedure having been followed and ample opportunity having been granted to the petitioner, no case whatsoever has been made out to warrant any orders, or interference under Article 227 of the Constitution of India.

8. As discussed, and noted in the preceding paragraphs, the petitioner had not contested the Ejectment Suit and though had sought for setting aside the ex parte order of hearing dated 20.09.2011, which was also dismissed on appeal, did not take any other steps to ensure timely action or representation in the matter. Apart from filing a civil revision before this Court, after the Execution Case had been filed on the passing of the final judgment and decree dated 20.08.2015, challenging the ex parte judgment, no objections on the question of substitution were ever raised, and in fact, the petitioner neglected to appear before the Courts below as evident from the records, especially orders dated 07.02.2017 and 12.04.2018. There is therefore no need for this Court to allude to or to re-examine the judgment and decree, which appears to have been only reproduced by order dated 16.05. 2018, on a review filed by the petitioner.

9. On examination of the records and the orders passed therein, the same are replete with instances of the errant conduct of the petitioner in the entire proceedings, which had commenced since 2010. No application for setting aside of the ex parte impugned judgment and order was ever filed. Even in the

proceedings with regard to the substitution of the original plaintiff, the petitioner in spite of receipt of notice did not contest the same. On the question of abatement, the original plaintiff had expired when the matter had been reserved for judgment and decree, and as such, by application of Order 22 Rule 6 CPC, there can be no abatement on this ground. The substitution being effected thereafter, therefore, there is no illegality in the judgment and decree as sought to be made out by the petitioner. The only recourse taken by the petitioner after the passing of the final Judgment and Decree, was to somehow frustrate the execution proceedings, on the two grounds raised as aforementioned, i.e abatement of the suit and the question of substitution, which are also the main grounds raised in the instant Revision Petition. In the considered view of this Court, on the facts of this case, these grounds as set up are without any merit. The proceedings before the lower Courts though seeming superfluous, however, no illegality or irregularity, is apparent on the face of the records on these two counts. As such, there being no materials or grounds present, calling for any interference, the instant revision application under Article 227, is therefore liable to be rejected.

10. Accordingly, as observed and discussed above, the instant civil revision application stands dismissed and disposed of.

11. No order as to costs.

12. Records of the Lower Courts to be transmitted back immediately.

JUDGE

Meghalaya
10.10.2023
"V. Lyndem PS"

