

IN THE HIGH COURT OF TRIPURA
AGARTALA

CRP No.108 of 2012

- 1. Jute Corporation of India Ltd.,**
represented by its General
Manager and Company Secretary,
15, N. Nellie Sengupta Sarani,
Kolkata-700087, West Bengal
- 2. The Regional Manager,**
Jute Corporation of India Ltd.,
Regional Office, Ronaldsay Road,
Agartala, West Tripura

..... **Petitioners**

- V e r s u s -

- 1. Shri Santosh Kumar Choraria,**
- 2. Shri Bimal Kumar Choraria,**

Both are sons of late Punam Chand
Choraria, 5, Synagogue Street,
Kolkata – 700001

..... **Respondents**

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioners : Mr. S.M. Chakraborty, Sr. Advocate
Mr. T.D. Majumder, Advocate

For the respondents : Mr. R. Chakraborty, Advocate

Date of hearing and delivery : **02.04.2015**
of Judgment and order

Whether fit for reporting :

YES	NO
√	

JUDGMENT & ORDER (ORAL)

Heard Mr. S.M. Chakraborty, learned senior counsel assisted by Mr. T.D. Majumder, learned counsel appearing for the petitioners as well as Mr. R. Chakraborty, learned counsel appearing for the respondents.

[2] This is a petition filed under Article 227 of the Constitution of India challenging the validity of the order dated 19.09.2012 delivered in RCC (Revision) No.03 of 2010 by the revisional authority established under Section 22 of Tripura Buildings (Lease and Rent Control) Act, 1975, the District Judge, West Tripura, Agartala.

[3] The undisputed fact that has transpired from the record is that the respondent instituted a petition under Section 12(2)(b)(iii) of Tripura Buildings (Lease and Rent Control) Act, 1975, hereinafter referred to as the Rent Control Act for eviction of the tenant on two grounds namely, for default in making payment and for bona fide need. Since the petitioners here did not purge the default, they were not permitted to contest the petition on merit. Thus by the order dated 21.12.2005, the Rent Control court allowed the petition ordering that:

“the opposite party shall pay arrear of rent of the proceeding premises to the petitioner since April, 1989 upto 30.11.2005 at the rate of 4047/- per within 2(two) months from the date of this Order, failing which the opposite party shall hand over the vacant possession of the proceeding premises to the petitioners. Failure of the above condition by the tenant-O.P. the tenant O.P. is liable to be

evicted from the proceeding premises by execution of this order."

[4] The said order was never called in question by the petitioners herein. As consequence thereof, the respondents herein instituted an execution proceeding being RCC (Execution) No.14 of 2006 in the Rent Control Court. After expiry of substantial time from the day of receipt of notice of that execution proceeding, the petitioners herein filed an objection under Section 47 of the CPC read with Section 11 of the Tripura Buildings (Lease and Rent Control) Act, 1975 and Section 151 of the C.P.C. against the said execution proceeding filed by the respondents. Primarily, objections were raised on two grounds viz. (i) that the rent could not be deposited as there was ambiguity as to the identity of the landlords (ii) that during execution proceeding, the respondents had received a sum of Rs.8,73,747/- (Eight lakhs Seventy Three thousand Forty Seven). It is also admitted position that the petitioners deducted a sum of Rs.1,54,191/- (One lakh Fifty Four thousand One hundred Ninety One) as Tax Deducted at Source (TDS in short). Such acceptance of the said sum to satisfaction of the decree rendering the execution proceeding unsustainable.

[5] Mr. S.M. Chakraborty, learned senior counsel appearing for the petitioners, for purpose of laying of factual aspects relating to this petition, has submitted that by the order dated 08.07.2010, the Rent Control court (the court of the Civil Judge, Jr. Division, Agartala, West Tripura, No.1) rejected the objection holding that:

"Where any bonafide doubt or dispute arises as to the person who is entitled to receive the rent for any building the tenant may deposit such rent before such authority and in such manner as may be prescribed and shall report to the Rent Control court the circumstances under which such deposit was made by him, and may continue to deposit any rent which may subsequently become due in respect of the building before the same authority and in the same manner until the doubt is removed or the dispute is settled by the decision of a competent Court or by a settlement between the parties or until the Rent Control Court makes an Order under clause(b) of Sub-Section (4) as the case may be."

[6] Having referred to the provision of Section 11(3) of the Rent Control Act, the executing court has observed that the plea of the judgment debtors cannot be entertained as there had been no affirmative action in this regard by the petitioners. Thereafter, the executing court by the order dated 08.07.2010 has observed that the executing court cannot go beyond the decree and as such, any payment made during the execution case cannot be accepted as satisfaction of the decree holder, unless such satisfaction is recorded by the decree holder in the proceeding. Since there was no such certificate, the said objection also cannot be sustained and accordingly, the objection raised under Section 47 of the C.P.C. has been rejected. As the petitioners felt aggrieved by the order dated 08.07.2010, they preferred a revision under Section 22 read with Section 15 of the Rent Control Act before the revisional authority, the District Judge, West Tripura, Agartala. By the impugned order, the revision petition has been dismissed.

[7] While affirming the findings of the executing court, the revisional court has further observed that the petitioner had no authority or right to deduct any amount from the monthly rent entitled to the respondents. As such, there was no full payment as per the order dated 02.12.2005. Even that amount was not paid within two months. As a result, the decree remained executable on the teeth of contingent direction of eviction by the Rent Control court.

[8] Mr. Chakraborty, learned senior counsel appearing for the petitioners has urged this Court while questioning the validity of this order dated 19.04.2012 passed by the revisional authority that the decree has been satisfied on the face of the admitted fact that the respondents have received the amount which they were entitled to get in terms of the order dated 02.12.2005 and that must be construed as satisfaction of the decree. In this regard, he has referred to the provisions of Order XXI Rule 2 of the C.P.C. to contend that satisfaction of the decree ought to have been recorded by the executing court. For purpose of reference, the provisions of Order XXI Rule 2 of the C.P.C. is extracted hereunder:

2. Payment out of Court to decree-holder – (1)
Where any money payable under a decree of any kind is paid out of Court, [or a decree of any kind is otherwise adjusted] in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree, and the court shall record the same accordingly.

(2) The judgment-debtor [or any person who has become surety for the judgment-debtor] also may inform the Court of such payment or adjustment,

and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified, and if, after service of such notice, the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

[(2A) No payment or adjustment shall be recorded at the instance of the judgment-debtor unless-

- (a) the payment is made in the manner provided in rule 1; or**
- (b) the payment or adjustment is proved by documentary evidence; or**
- (c) the payment or adjustment is admitted by, or on behalf of, the decree-holder in his reply to the notice given under sub-rule (2) of rule 1, or before the Court.]**

(3) A payment or adjustment, which has not been certified or recorded as aforesaid, shall not be recognised by any Court executing the decree.

[9] Mr. R. Chakraborty, learned counsel appearing for the respondents has contended that there is no infirmity in the impugned order dated 19.09.2012. Apart that, he has submitted that the respondents were never satisfied nor had they issued any certificate of satisfaction. Firstly, the payment of arrears rent was not made as per stipulation of the decree dated 02.12.2005 and further they have not paid the full arrears amount inasmuch as they had no authority to deduct the TDS. When a competent court directs payment of arrears of rent in a particular manner, unless the judgment debtor pays the said amount in that manner or to the satisfaction of the decree holder, no Court can construe that the decree has been satisfied. He has further submitted that the latitude that has been provided under Order XXI Rule 2 is subject to Rule

2(3), which provides that payment or adjustment, which has not been certified or recorded as per the provisions of Clauses-1, 2 and 2(A) of Rule 2 of Order XXI, no court can recognize such payment or adjustment while executing the decree. He has further submitted that the executing court cannot go beyond what has been provided in the decree itself. The executing court has no competence either to differently interpret the decree or to execute it in a different manner. In support of that contention, Mr. Chakraborty, learned counsel appearing for the respondents has relied a decision of the apex court in **Vasudev Dhanjibhai Modi vs. Rajabhai Abdul Rehman and Ors.**, reported in **AIR 1970 SC 1475**, where the apex court has enunciated the law as under:

6. A Court executing a decree cannot go behind the decree between the parties or their representatives; it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties.

[10] He has further referred to another decision of the apex court in **Rafique Bibi (D) by Lrs. vs. Sayed Waliuddin (D) by Lrs. and Ors.**, reported in **AIR 2003 SC 3789**, where the apex court has held that:

6. What is 'void' has to be clearly understood. A decree can be said to be without jurisdiction, and hence a nullity, if the Court passing the decree has usurped a jurisdiction which it did not have; a mere wrong exercise of jurisdiction does not result in nullity. The lack of jurisdiction in the Court passing the decree must be patent on its face in order to enable the executing Court to take

cognizance of such nullity based on want of jurisdiction; else the normal rule that an executing Court cannot go behind the decree must prevail.

[11] Mr. R. Chakraborty, learned counsel appearing for the respondents having emboldened by these decisions has submitted that even the petitioners did not challenge the competence of the Rent Control court in passing such decree. Therefore, the executing court as well as the revisional court had correctly held that the decree is executable. On the aspect whether on payment of the arrears rent, it can be held that the decree cannot be executed or that the decree has been 'satisfied or adjusted' he has further referred to a decision of the Bombay High Court in **Smt. Savitribai A. Salvi vs. Smt. Suman Navgire & Ors.**, reported in **2009 (4) AIR Bom CR 150**, where it has been held that:

Further objection was that the decree stipulated payment of money in court within a prescribed time and that condition has been complied with and, therefore, possession warrant could not have been issued. Even this aspect has been gone into elaborately by the court below. The Courts below have adverted to the factual aspects and have pointed out that the amount was to be deposited within the time stipulated. However, the judgment debtors deposited Rs. 5100 by way of two installments but failed to deposit interest thereon as directed by the trial court. In the order passed by the executing court, it has observed that the deposit was not made within time. On the own showing of the petitioner, the amount directed to be deposited by the trial court was deposited in two installments i.e. on 9th July 1999 and 20th July 1999. There is no dispute that the amount was not deposited within the stipulated time. Hence, when the condition of deposit in the decree having not been complied with admittedly, the executing court could not have granted any benefit to the Petitioner/ Judgement Debtor. There is no question of the Executing Court extending the time for deposit.

The Executing Court had to go by the decree and when it found that the condition of deposit has not been complied with within the time stipulated, then, it had no alternative but to give effect to the consequences of default and issue the warrant of possession. It rightly issued that and even the factual finding against the petitioner on this count requires no interference in writ jurisdiction.

[12] After appreciating the rival contentions, the solitary questions that falls for consideration of this Court is that whether the petitioners can raise an objection against the executing proceeding on depositing the substantial part of the arrears rent on contending that the execution proceeding can no more be sustained?

[13] The apex court in **State of Punjab & Others vs. Mohinder Singh Randhawa and another**, reported in **AIR 1992 SC 473** has held that if the decree is not challenged in the appeal or if the appellate decree is not challenged before the superior court with success, in absence of interference in the execution proceeding any part of the decree cannot be called in question, save and except on the ground of nullity of the decree for lack of jurisdiction of the court which has passed the decree under execution.

Here is a case where no challenge was thrown against the order dated 21.02.2015 and as such, the contingent direction on failure of making payment of arrears of rent within a period of 2(two) months from 02.12.2005 has become enforceable by way of execution. The execution court definitely does not have any jurisdiction, in the set of facts as narrated above, to read the decree otherwise than what has been provided in the decree.

[14] The final question that has fallen for consideration has already been answered. Whether the payment amidst the executing proceeding would absolve the petitioners from the order of eviction? This Court is in total concurrence with what has been observed by the Bombay High Court in **Smt. Savitribai A. Salvi vs. Smt. Suman Navgire & Ors.** that the executing court will not exercise any sort of power by granting extension of time or providing the instalment for paying the arrears of rent or to reiterate the direction of eviction in the event of failure in making payment of arrears of rent within the stipulated period or any account whatsoever.

[15] Having reference to Order XXI Rule 2 of the C.P.C., this Court has no hesitation to hold that Clause-1 under Order XXI Rule 2 of the C.P.C. is explicit enough to gather its true meaning that unless the decree holder records his satisfaction by way of certificate, the executing court cannot recognize any satisfaction or adjustment and in that event, the duty of the executing court would be to execute the decree/order, if it finds that the decree/order is executable.

[16] Having held so, this Court does not find any infirmity in the impugned order and accordingly, this petition stands dismissed. However, there shall be no order as to costs.

On observing that the petitioner No.1 has been in possession in the premises for quite a long time and the petitioner

No.1 being a Central Government Corporation, this Court is of the view that they shall occupy the premises for 6(six) months from today subject to payment of arrears of rent within 3(three) months from today and also they shall continue to pay the regular rent for that period of 6(six) months. Under no circumstances that period shall be extended. For that period, the warrant of possession may not be given effect to. Thereafter, without any reference to this Court or any other court subordinate to it, that warrant of possession shall be executed by all means and if there is any resistance offered by the petitioners that shall be removed in accordance with the law and at the cost of the respondents.

JUDGE

Sujay