

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP (227) No.460 of 2016

Ajju Deshlahre, aged 45 years, son of Sukhitram Deshlahre, resident of Danitola Ward, Dhamtari, tenant, near Chicken Shop Baster Road, Bombay Garage, Tahsil and District Dhamtari (CG)

---- Petitioner

Versus

Ravindra Kumar Nanda, aged 67 years, son of late Shri Nemnath Nanda, resident of Daak-bungalow ward, tahsil and district Dhamtari (CG)

---- Respondent

For Petitioner	:	Mr. Somnath Verma, Advocate
For Respondent	:	Mr. H.B.Agrawal, Senior Advocate with Mr.S.K.Kushwaha, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

10/11/2016

1. The decree-holder/respondent herein instituted a suit against judgment debtor/defendant for recovery of possession and arrears of rent of ₹ 48,000/-, in which the trial Court by its judgment dated 3.7.2014 granted decree in favour of the respondent/decreed-holder for delivery of possession and arrears of rent of ₹ 48,000/- within a period of 30 days.
2. In duly constituted execution levied by respondent/decreed-holder, vacant possession of the suit accommodation was

delivered on 29.9.2014 and ₹ 48,000/- was also paid by the petitioner/judgment debtor to the respondent/decree-holder.

3. The Executing Court by its order dated 30.3.2015 dismissed/closed the execution holding that that decree has been satisfied. Thereafter, the respondent/decree-holder again filed an application under Order 20 Rule 10/12 of the CPC before the Executing Court. That application was rejected. Against which, the respondent/decree-holder preferred writ petition being WP (227) No.892 of 2015 before this Court. That writ petition was withdrawn and liberty was granted to file a fresh application before the Executing Court. The respondent/decree-holder filed an application under Order 20 Rule 10/12 of the CPC before the Executing Court and by the order impugned, that has been allowed holding that the respondent/decree-holder is entitled for arrears of rent from the date of institution of suit i.e. 10.4.2012 to the date of delivery of possession i.e. 29.9.2014 of ₹ 43,500/-.

4. Against which, this writ petition under Article 227 of the Constitution of India has been filed by the petitioner/defendant.

5. Mr.Somnath Verma, learned counsel appearing for the petitioner, would submit that decree was passed by the trial Court for payment of rent from the date of institution of suit till the date of delivery of possession which was not claimed by the plaintiff in the suit. The trial Court has exceeded its jurisdiction in granting such

relief.

6. On the other hand, Mr.H.B.Agrawal, learned Senior Advocate with Mr.S.K.Kushwana, learned counsel for the respondent, would submit that mesne profit is to be recovered from the date of institution of the suit till the date of delivery of possession. He relied upon the judgment in the matter of **The Bank of Bihar Ltd. Vs. Srangdhr Singh and another**¹.

7. Admittedly, the suit was filed for delivery of possession and arrears of rent of ₹ 48,000/-. The respondent/decreed-holder did not claim relief of mesne profit i.e. damages from the date of institution of suit till the date of delivery of possession and therefore, the trial Court did not grant such relief in favour of the respondent/decreed-holder. Application filed being Execution Case No.34A/2013 was dismissed by the Executing Court on 30.3.2015 holding the decree has been satisfied. The writ petition filed against that order was withdrawn by the petitioner with liberty to file an application under Order 20 Rule 12 of the CPC as such, order of Executing Court dismissing the execution having been satisfied has become final.

8. In the matter of **Srangdhr Singh** (supra), the Privy Council has clearly held that an execution Court cannot go behind the decree and question its correctness, but also held that when the decree is silent, and gives no indication as to what property should be sold in execution, it is permissible for the Court to look into the

¹ AIR 1949 Privy Council 8

judgment in order to find out whether upon any issue properly raised and determined as between the parties interested.

9. The Supreme Court in the matter of TCI Finance Ltd. Vs. Calcutta Medical Centre Ltd. And another² had held that the executing court cannot go beyond the decree. It is the settled position in law which flows from Section 38 of the CPC; except when the decree is a nullity or is without jurisdiction.

10. Very recently, the Supreme Court in the matter of Shivshankar Gurgar Vs. Dilip³ following its earlier judgment in the matter of Deepa Bhargava Vs. Mahesh Bhargava⁴, has held that the executing court neither can go beyond the decree nor it has jurisdiction to modify the decree, it has to execute the decree as it is. Relevant paragraph of the report states as under:-

“.....It is a settled principle of law that the executing court cannot go beyond the decree. It has no jurisdiction to modify a decree. It must execute the decree as it is. This Court in Deepa Bhargava v. Mahesh Bhargava (supra) held thus:-

“9. There is no doubt or dispute as regards interpretation or application of the said consent terms. It is also not in dispute that the respondent judgment-debtors did not act in terms thereof. It has no jurisdiction to modify a decree. It must execute the decree as it is.....”

² (2005) 8 SCC 41

³ (2014) 2 SCC 465

⁴ (2009) 2 SCC 294

11. A careful perusal of the judgment would show that the respondent/decreed-holder did not claim any relief that he is entitled for rent from the date of institution of suit till the adjudication of the suit or delivery of possession and therefore, the trial Court did not grant decree in favour of the respondent/decreed holder, whereas the Executing Court ignoring this fact has allowed the application and granted the relief directing payment of arrears of rent from the date of institution of suit till delivery of possession. The Executing Court is absolutely unjustified in granting such relief from the date of institution of suit till the date of delivery of possession.

12. Accordingly, the order impugned is hereby set aside and it is held that the respondent/decreed-holder is not entitled for rent of Rs.43,500/- from the petitioner. However, the petitioner/judgment debtor will be entitled for cost of ₹ 5000/- from the respondent/plaintiff for unnecessarily dragging the petitioner/judgment debtor before the trial Court and before this Court.

13. The writ petition is allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-