THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.3731 of 2015

ORDER:

This Civil Revision Petition under Section 115 of the Code of Civil Procedure, 1908 ('the Code', for brevity) by the judgment debtor is directed against the order dated 21.08.2015 of the learned I Senior Civil Judge, City Civil Court, Hyderabad passed in E.P.no.82 of 2012 in O.S.no.1582 of 1985 filed by the respondent/DHr under Order XXI Rule 34 of the Code requesting the Court to direct the JDr to comply with the terms of the compromise decree dated 07.03.2015 passed by this court in CCCA 70 of 1990 by executing a sale deed in favour of the DHr in respect of the EP schedule property and to execute a sale deed in favour of the DHr on failure of the JDr to do so.

2. I have heard the submissions of the learned counsel appearing for the revision petitioner/JDr ('the JDr', for brevity) and the learned counsel for the Decree Holder ('the DHr', for brevity). I have perused the material record.

3. The facts, which are necessary to be stated as a preface to this order, in brief, are as follows:

Admittedly, the suit O.S.no.1582 of 1985 on the file of the trial Court was filed for recovery of possession in respect of the premises admeasuring 2880 square yards consisting of open land and 11 sheds and garages etcetera situated at Saidabad, Hyderabad and for mesne profits. That suit was decreed in March 1990. An appeal in CCCA 70 of 1990 was preferred before this Court. During the pendency of the said appeal, both the parties had arrived at an understanding and a MOU was executed amongst the DHr, JDr and M/s. Hardevdas Laxminarayan Patwari & Company. In clause (iii) of the said MOU, it is mentioned as follows:

> **"The party of first part shall transfer portion 'A' 7 (seven) sheds shown in Blue color in the plan in favour of the Second Party showing consideration of Rs.8 Lakhs (Rupees eight lakhs only) and the first party further agrees to transfer portion "B" 4 (four) sheds, shown in the Green Colour in the**

plan annexed to this deed showing a consideration of Rs.7 Lakhs (Rupees seven lakhs only) in favour of the Third Party. However, it is agreed that there will be no monetary payment for the said transfer except making entries and consideration for which this transfer is affected because party of second and third party are assigning their rights to purchase the property of Sri Harbans Singh and also in view of the amounts, time spent by the Second and Third party in getting ULC permission for the property of Sri Harbans Singh."
(Reproduced verbatim)

It is also an admitted fact that thereafter the JDr executed a GPA dated 18.03.1992 in favour of Purshkarlal Gupta, who is the nominee of the DHr. Under the said GPA, the said attorney was given power to execute sale deeds etcetera in favour of the DHr and M/s. Hardevdas Laxminarayan Patwari & Co. or their nominees. Thereafter, admittedly, an agreement of Transfer dated 10.04.1992 was executed between the parties and even that agreement of transfer was also a derivative of the understanding between the parties under the MOU. Thereafter, a joint memo was filed in the aforementioned CCCA along with CCCAMP 11912 of 2004 for recording the compromise. This Court, vide its decree and judgment dated 07.03.2005 granted a compromise decree in terms of the compromise that are reduced into writing in the joint memo. Thus, under clause (iii) of the MOU, the JDr had agreed to transfer portion "A" consisting of 7 sheds in favour of the DHr and had further agreed to execute a General Power of Attorney in favour of Suresh Gupta in respect of the subject property under clause (7) of the MOU. However, though the JDr had executed such power of attorney and forwarded the same along with letter dated 28.02.2005, the said power of attorney was of no avail as it was unregistered. In accordance with the MOU, the JDr had executed an agreement dated 10.04.1992 agreeing to transfer the property mentioned in the EP schedule in favour of the DHr is not in dispute. However, as the JDr had failed to execute the irrevocable power of attorney in favour of Suresh Gupta or his nominee as per the terms of the MOU and had failed to transfer the EP schedule property in favour of the DHr by way of execution of a registered sale deed, the DHr had filed the aforementioned execution petition. The same was resisted by the JDr. On merits, and by the order impugned, the trial Court had allowed the EP and directed the JDr to execute and register the sale deed in respect of the EP schedule property in view of the agreement dated 10.04.1992 and clause (iii) of the MOU dated 29.02.1992. In the operative portion of the order of the Court below, it is also observed that in case the JDr fails to do so within a month from the date of the said order, the DHr will be at liberty to get the documents executed and registered through the process of the court and recover the costs from the JDr.

4. Aggrieved of the said order, the JDr had filed this revision petition before this Court.

5. Learned counsel for the JDr while reiterating the chronology of events, which lead to the MOU, the execution of the Joint Memo, the compromise and the other documents etcetera would further submit as follows:

The execution petition is not maintainable. The trial Court had failed to appreciate that in the judgment and decree dated 07.03.2005, there is mere recording of compromise arrived at between the parties at an earlier point of time outside the Court and the appeal is allowed in terms of the Memorandum of compromise, which itself records that the parties have implemented the said compromise and arrangement in accordance with the documents referred to therein. The trial Court had failed to appreciate that in view of clause 5 of the compromise decree dated 07.03.2005 in CCCA 70 of 1990, nothing more is required to be done by either of the parties. Hence, the execution petition is not maintainable. However, the trial Court had passed an erroneous order without adverting to the contents of the terms of the compromise, the judgment and the compromise decree. Nothing remained to be done in the matter by the JDr even as per the terms of the compromise. The JDr executed GPA bearing Document no.608 of 1992 in favour of Pushkarlal Gupta on 18.03.1992 and also an agreement dated 10.04.1992 to transfer part of the said property, i.e., 2880 square yards out of 4700 square yards and as such, the only remedy of the DHr is to enforce its right by initiating appropriate proceedings.

6. On the other hand, the learned counsel for the DHr while supporting the orders of the Court below would contend as follows:

The EP is filed only seeking a direction to the JDr to comply with the terms of the compromise in CCCA 70 of 1990 by executing and registering a sale deed in favour of the DHr in respect of the EP schedule property. The Court below having considered all the contents of all the documents had rightly passed an order in favour of the DHr. Clause (3) of the MOU is very clear in regard to the relief claimed in the execution petition. There is also a mention that consideration for the said transfer is assignment of rights of the DHr herein to purchase the property of Harbans Singh and also the amounts spent and time spent by the DHr in getting ULC permission for the property of Harbans Singh. Therefore, consideration is already received by the JDr in respect of the EP schedule property for transferring the same in favour of the DHr. In fact, Harbans Singh had executed 15 sale deeds in favour of the JDr. The JDr cannot back out from the terms of the compromise recorded by the Court in CCCA 70 of 1990 and the compromise decree passed in the said CCCA. The decree, which has become final has to be given its effect. Though the GPA was given in favour of Pushkarlal Gupta, it is not in dispute that he had passed away and as such steps afresh have to be taken to register the property in favour of the DHr. If the EP is not ordered as prayed for, the DHr would be subjected to manifest injustice. The trial Court having passed a reasoned order has given effect to the compromise decree appropriately to see that the DHr is given the fruits of the decree. There is no merit in the revision.

7. I have carefully perused the documents and I have bestowed my attention to the facts and I have given earnest consideration to the submissions.

8. The points for determination are:

i) Whether the DHr is entitled to have a sale deed executed and registered in its favour by the JDr in respect of the EP schedule property as per clause no. (iii) of the MOU dated 29.09.1992 and as per the agreement of transfer dated 10.04.1992 and the decree of compromise?

ii) Whether the order impugned is sustainable under facts and in law?

9. <u>POINTS</u>:

The facts and contentions are already stated supra, in detail.

Pursuant to the terms of the compromise between the parties, the JDr had already executed a GPA in favour of Pushkarlal Gupta on 18.03.1992. Had he been alive, he would have executed and registered the sale deed. However, on his death, the power of attorney given to him has come to an end. Though the JDr had executed a power of attorney in favour of Suresh Gupta and Shashikala Devi, the property could not be transferred as contemplated under the compromise/MOU as the said power of attorney is not registered. The necessity for filing the execution petition by the DHr against the JDr had arisen in the circumstances urged by the DHr, which are extracted supra while dealing with the contentions and submissions of the parties and particularly, for the reason that the GPA Holder Pushkarlal Gupta had died and the subsequently executed GPA being unregistered is of no avail. Thus, in the facts and circumstances of the case, the obligation of the JDR to execute and register the sale deed had remained unfulfilled. Admittedly, the DHr had addressed a letter dated 15.11.2005 for registration of the sale deed as early as possible. The DHr has also got issued a notice dated 15.10.2011, wherein it is stated that a power of attorney executed in favour of Suresh Gupta and Shashikala Devi empowering to execute registered documents in favour of the DHr as well as M/s. Hardevdas Laxminarayan Patwari & Co. was enclosed to the letter dated 28.02.2015, but, the said GPA was not registered, and that as such the property could not be transferred as per the terms of the compromise. Even thereafter also, the DHr had addressed letters requesting the JDr to perform the obligations under the MOU and the compromise decree. Despite such notice, the demand in the notices is not complied with. Therefore, the execution petition is filed. It is pertinent to note that the JDr is contending that instead of filing the execution petition, the DHr has to enforce its right by initiating appropriate fresh proceedings as the JDr had executed the GPA bearing document no.608/92 in favour of Pushkarlal Gupta on 18.03.1992 and also an agreement dated 10.04.1992 to transfer part of the said property, i.e., 2880 square yards out of 4700 square yards. In the well considered view of this Court, in the facts and circumstances of the case, the DHr need not be driven to file appropriate fresh proceedings as the execution petition itself is the appropriate proceeding. Viewed thus, this Court finds that the JDr is obliged under facts and in law to execute and register, either directly or through a validly constituted power of attorney holder, a sale deed in favour of the DHr or its nominee in respect of the EP schedule property.

10. Before parting with the case, it is necessary to mention that the learned counsel for the JDR had placed reliance on a decision in **Novartis A.G v. Wander Pvt. Ltd**.[1] in support of the contention that simply because an adjustment outside the Court is reported to the Court and is recorded in the compromise, the DHr would not be entitled to have any dispute adjudicated in the execution even though the said dispute between the parties arises out of a contract entered into outside the Court. I have carefully gone through the decision. In this cited decision, the High Court of Delhi considered the question whether the decree in that cited case is an executable decree or not and held on facts that the decree is not executable. Therefore, the decision of the case turned on its facts. The law is well settled that as to whether the compromise decree, which is passed in terms of the compromise reported to the Court is executable or not depends upon the interpretation of the decree and the facts and circumstances of that particular case. In the case on hand, this Court having examined the terms of the document, which are also referred to in this order agreed with the finding of the court below that it is obligatory for the JDr to comply with the request in the execution petition of the DHr. Therefore, the decision is not helpful to the JDr. The learned counsel for the DHr had relied upon the following decisions. The decision in **Shreenath v. Rajesh**[2] is relied upon in support of the contention that when two interpretations are possible, one which curtails the procedure without eluding justice is to be adopted. In the cited decision, it is held as follows:

> **"In interpreting any procedural law, where more than one interpretation is possible, the one which curtails the procedure without eluding justice is to be adopted. The procedural law is always subservient to and is in aid of justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed."**

The decision in **Manish Mohan Sharma v. Ram Bahadur Thakur Ltd.**[3] is relied upon in support of the proposition that the effort of the executing Court must be to see that the parties are given the fruits of the decree. In **B.Gangadhar v. B.G.Rajalingam**[4]**,** the facts are as follows: 'The trial court had declared the respondent to be the absolute owner of the suit property and directed the petitioner, his men, tenants to vacate and hand over vacant possession of the land in possession of the petitioner. The decree had become final. However, the petitioner in violation of the orders of the Court had constructed shops and inducted tenants into possession of such shops. The question before the Supreme Court was whether on the petitioner's application under Order XXI Rule 98 and Section 151 of the Code, the executing Court can direct demolition of the shops. The 2nd questions was whether the tenants in possession being not *eo nominee parties* to the decree were not bound by the decree of the trial Court and that therefore, the direction to dispossess them was illegal. Both the said questions were answered in favour of the Decree Holder. The Supreme Court in this decision had held that when a decree for possession of immovable property was granted and delivery of possession was directed to be given, the executing Court is bound to pass orders independently for enforcement of decree for possession and that such power includes the power to remove any unlawful construction made *pendente lite* and that it is settled law that the tenant who claims title, right or interest in the property through the judgment debtor or under the colour of interest through him, is bound by the decree.

The facts of the case in **Latim Lifestyle & Resorts v. Saj Hotels (P) Ltd**.[5] show that a suit for specific performance was compromised and a compromise decree was passed and therefore, the rights and obligations of the parties were crystallized in the form of recitals in the compromise decree. The question was whether the promises and reciprocal promises were incorporated in the compromise decree. On facts, the Supreme Court held that the compromise decree did not incorporate any reciprocal promises but involved independent obligations; and that the executing Court can compel fulfillment of respective obligations by issue of process, appointment of Commissioner or directing detention in civil prison. The decision in **Shri M.R.Malhotra (since deceased) Through LRs & Ors. V. Competent Builders Pvt. Ltd**.[6] is relied upon in support of the proposition that a decree should have been executed if it is found that there would be manifest injustice in not allowing execution of the same to the parties. The ratios in the decisions supra fully support the case of the Decree Holder. In the case on hand, the JDr had realized the fruits of the compromise decree, but did not cooperate with the DHr and therefore, the DHr could not realize the fruits of the compromise decree and therefore, the DHr is constrained to file the instant execution petition. In deed in the case on hand it is undeniable that for the twin reasons viz., (i) the death of the original power of attorney holder and (ii) the power of attorney that was executed since not registered is of no avail, the present predicament had arisen and the obligation of the JDr had remained unfulfilled. In the circumstances, this Court finds that manifest injustice would ensue to the DHr if the execution petition filed for realization of the fruits of the compromise is not allowed to be executed. For the aforesaid reasons, this Court finds that the Court below is justified in passing the order impugned and that the said order does not call for interference.

11. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SEETHARAMA MURTI, J

27th June, 2016

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[1] 2009 SC ONLINE Del 1376

[2] (1998) 4 Supreme Court Cases 543

[3] (2006) 4 Supreme Court Cases 416

[4] (1995) 5 Supreme Court Cases 238

[5] (2003) 10 Supreme Court Cases 189

[6] 192 (2012) DLT 295