Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14424 OF 2018

Parvatibai Shankar Patil & ors. ...Petitioners

Versus

Ramji Pragji Javeri & ors. ...Respondents

Mr. Shriram S. Kulkarni, I/b Lakshyaved R. Odhekar for the Petitioner.
Mr. Eknath Patil, Petitioner no.4 present.
Mr. Anil J. Aahuja, for the Respondents.

CORAM: M. S. SONAK, J
DATED: 18th December, 2018

JUDGMENT:-

1. Heard Mr. Kulkarni for the petitioner and Mr. Aahuja for the respondents.

2. The challenge in this petition is to the orders dated 29th October, 2018 and 4th December, 2018 made by the Executing Court and the Appeal Court in relation to the execution of eviction decree dated 30th June, 1986 made by the Trial Court in RCS No.898 of 1978.

3. Mr. Kulkarni, the learned Counsel for the petitioners submits that the Appeal Court committed error in holding that no appeal lies against the order dated 29th October, 2018 made by the Executing Court under Section 34 of the Maharashtra Rent Control Act, 1999. He submits that the petitioners, who are Judgment Debtors raised objections under Order XXI Rule 97 of Civil Procedure Code ('CPC', for short) objecting to the

execution of decree dated 30th June, 1986 on the ground that such execution was barred by limitation. He submits that any adjudication under Order XXI Rule 97 of CPC is appealable and therefore, appeal was clearly maintainable under Section 34 of the Maharashtra Rent Control Act, 1999.

4. Mr. Kulkarni submits that in the present case, an order was passed on 30th May, 1992. There was no stay to the execution of the decree dated 30th June, 1986. Therefore, the period of limitation for execution commenced from 30th May, 1992 and the execution which was launched more than 12 years after this date, was clearly barred by law of limitation. Mr. Kulkarni refers the ruling in the case ***Ram Bachan Rai & ors. vs. Ram Udar Rai & ors.*** reported in ***(2006) 9 SCC 446*** in support of his contention. Mr. Kulkarni also refers to Article 136 of the Schedule to the Limitation Act, 1963 to submit that the period of limitation is 12 years from the date when the decree becomes enforceable. On these counts Mr. Kulkarni submits that the impugned orders warrant interference.

5. Mr. Aahuja, the learned Counsel for the respondents points out that the appeal was not at all maintainable under Section 34 of the said Act and the same was rightly dismissed. In any case, he points out that the decree dated 30th June, 1986 was appealed by the petitioners and such appeal was ultimately dismissed on 9th January, 2009. The petitioners applied for continuation of stay on the execution of the decree and even filed undertaking as directed by this Court. Letters Patent Appeal filed by the petitioners was dismissed on 18th June, 2009 and Special Leave Petition was dismissed on 6th August, 2011. Even after this petitioners continued in

possession of the suit premises on the basis of interim relief. The execution was launched on 5th April, 2011 and the same was very much within the prescribed period of limitation.

6. Mr. Aahuja submits that the conduct of the petitioners in suppressing fact that the petitioners had, in fact, filed undertakings in terms of this Court's order dated 9th January, 2009, is sufficient to dismiss the present petition with exemplary costs.

7. Rival contentions now fall for determination.

8. At least, *prima facie,* there is nothing wrong in the view taken by the Appeal Court, that the appeal was not maintainable before it under section 34 of the said Act. This is because the objections to the execution of the decree raised by the petitioners cannot be said to be relatable to objections under Order XXI Rule 97 of CPC. On the perusal of the appeal provisions, it is clear that the appeals are directed against decree of eviction and not against orders dismissing objections to the execution of the decree.

9. However, this is not a fit case to non-suit the petitioners only on the aforesaid ground. The two Courts, also adverted to the merits. The objections raised by the petitioners, even on merits, to the execution of the decree deserve dismissal.

10. In the present case, the decree for eviction was made by the Trial Court on 30th June, 1986. The petitioners appealed against the same and such appeal was ultimately dismissed on 27th November, 1991. The petitioners then instituted Writ Petition No.460 of 1992 before this Court and were protected by interim relief restraining the execution of eviction decree

subject to the usual terms. At page 80 of the paper-book, the petitioners have annexed the document explaining what was meant by "usual terms". One of the usual terms was that the execution proceedings shall not be proceeded with unless this Court, on an Affidavit or the record of the Trial Court, confirms that the stay is vacated. The usual terms required the petitioners to regularly pay rents and deposit decretal amount with costs.

11. Mr. Kulkarni, no doubt, on the basis of instructions from the petitioners had contended that no undertaking was ever filed by the petitioners and therefore, the stay granted in their favour stood vacated on 30th May, 1992 without turther ado. However, Mr. Aahuja, the learned Counsel for the respondents made specific statement that undertakings were filed by the petitioners in this Court and in fact, it was duty of the petitioners to have disclosed this fact not only to the Executing Court and Appeal Court but more particularly this Court since, the extraordinary jurisdiction of this Court under Article 227 of the Constitution of India was sought to be invoked.

12. Mr. Kulkarni, then, took instructions from Mr. Eknath Patil, petitioner no.4, who is present in the Court, as to whether any undertaking was indeed filed. Mr. Eknath Patil admitted that an undertaking was filed but submitted that such undertaking was only to the effect that rents have been paid/deposited. He states that there was nothing stated in the undertaking about the possession.

13. The undertaking, was really required to state the position regarding the payments of rents. If it is case of the petitioners that the undertaking had filed to the effect that the rents has

been paid, then, this is sufficient to conclude that the stay which they had secured had not been vacated.

14. In any case, clause 5 of the usual terms makes it clear that execution proceedings are not to proceed with unless on Affidavit or on record of the Trial Court, it is confirmed that the stay is vacated. The petitioners no doubt, suppressed the fact about filing of such undertaking. This suppression is serious, because in the facts of this case, the petitioners, even otherwise, seek to take advantage of their own acts of continuing in possession of the suit premises and thereafter alleging that since they had breached the undertaking given by them to this Court, there was no stay and therefore, pleading limitation against the execution of the decree.

15. Only inference that can be drawn in such situation, is that if the undertakings were to be produced before the Trial Court, then, the same would not have supported petitioners contention based upon limitation, which, even otherwise in the facts of the present case is entirely misconceived.

16. Ultimately, this Court, by its order dated 9th January, 2009 dismissed Writ Petition No.460 of 1992. At the request of the petitioners themselves the execution of the eviction decree was stayed subject to petitioners filing the usual undertaking. Mr. Kulkarni states that such undertaking was also never filed by the petitioners. However, on the perusal of para 22 of the judgment and order dated 9th January, 2009, it is quite clear that it was the case of the petitioners themselves that the *status quo* which had continued as on the date when Writ Petition No.460 of 1992 was disposed of, had continued.

17. Paragraph 22 of the judgment and order dated 9th January, 2009 reads thus:

> “22. At this stage, Counsel for the tenant prays that the decree of eviction be kept in abeyance for some time, as the tenant may consider taking up the matter in Appeal. Although this request is opposed by the landlord, it is ordered that status-quo as of today be maintained in respect of the suit premises for a period of eight weeks from today, on condition that all the adult members in the family of the tenant engaged in the business conducted from the suit premises shall file usual undertaking and pay all the outstanding dues receivable by the landlord within four weeks from today, failing which, the landlord will be free to proceed with the execution of the decree of eviction as conformed by this Court.”

18. The petitioners thereafter instituted Letters Patent Appeal No. 101 of 2009, which came to be dismissed by the Division Bench of this Court by order dated 18th June, 2009. At this stage the learned Counsel for the respondents made statement that for a period of six weeks the landlord will not execute decree of eviction and this statement was accepted by the Division Bench of this Court.

19. The petitioners then instituted a Special Leave Petition No.19544 of 2009 before the Hon'ble Apex Court, which was disposed of by order dated 6th August, 2011.

20. The order dated 6th August, 2011 made by the Apex Court again reads thus:

> “IA No.3 is allowed.
>
> On hearing Mr. Vinay Navare, Counsel for the petitioner, and Mr. U. U. Lalit, learned Senior Counsel appearing for the respondent, we find no merit in this Special Leave Petition. It is dismissed.

> The Petitioner, however, is allowed time till March 31, 2011 to vacate the suit premises, subject to his filing the usual undertaking/affidavit before this Court within four weeks from today."

21. It is pertinent to note that the petitioners, in pursuance of order made by this Court as well as the Apex Court continued in the suit premises but without filing any undertakings/affidavits. The petitioners now seek to take advantage of their conduct and that by suppressing material particulars.

22. In the facts of the present case, the execution was launched on 5th April, 2011, i.e. within less than a year after the eviction decree finally become enforceable. The execution can hardly be said to be barred by law of limitation.

23. The position in *Ram Bachan Rai (supra)* was entirely different. In the said case, at no stage was any stay granted by any Court and this significant circumstance has been noted by the Hon'ble Apex Court in paragraph 9 of the said judgment. In contrast, in the present case, the petitioners not only obtained a stay but continued in possession of the suit premises on the basis of such stay. Thus, even on merits, there is absolutely no ground made out for interference with the order made by the two Courts.

24. The Apex Court in the case of ***Satyawati vs. Rajinder Singh & another,*** reported in ***(2013) 9 Supreme Court Cases 491*** has deprecated the tendency to raise frivolous objections to delay execution proceedings. The observations in paragraphs 12 to 17 are relevant in that regard and the same read thus:

> "12. It is really agonizing to learn that the appellant-decree holder is unable to enjoy the fruits

of her success even today i.e. in 2013 though the appellant-plaintiff had finally succeeded in January, 1996. As stated hereinabove, the Privy Council in *General Manager of the Raj Durbhnga under the Court of Wards vs. Maharajah Coomar Ramaput Sing* had observed that the difficulties of a litigant in India begin when he has obtained a Decree. Even in 1925, while quoting the aforestated judgment of the Privy Council in the case of *Kuer Jang Bahadur vs. Bank of Upper India Ltd., Lucknow [AIR 1925 Oudh 448]*, the Court was constrained to observe that:

> "Courts in India have to be careful to see that process of the Court and law of procedure are not abused by judgment-debtors in such a way as to make courts of law instrumental in defrauding creditors, who have obtained decrees in accordance with their rights."

13. In spite of the aforestated observation made in 1925, this Court was again constrained to observe in *Babu Lal vs. M/s. Hazari Lal Kishori Lal & Ors. [(1982) 1 SCC 525]*

> "29. Procedure is meant to advance the cause of justice and not to retard it. The difficulty of the decree holder starts in getting possession in pursuance of the decree obtained by him. The judgment debtor tries to thwart the execution by all possible objections……"

14. This Court, again in the case of *Marshall Sons & Co. (I) Ltd. vs. Sahi Oretrans (P) Ltd. & Anr. [(1999) 2 SCC 325]* was constrained to observe in para 4 of the said judgment that:

> "4…..it appears to us, prima facie, that a decree in favour of the appellant is not being executed for some reason or the other, we do not think it proper at this stage to direct the respondent to deliver the possession to the appellant since the suit filed by the respondent is still pending. It is true that proceedings are

> dragged for a long time on one count or the other and on occasion, become highly technical accompanied by unending prolixity at every stage providing a legal trap to the unwary. Because of the delay, unscrupulous parties to the proceedings take undue advantage and person who is in wrongful possession draws delight in delay in disposal of the cases by taking undue advantage of procedural complications. It is also a known fact that after obtaining a decree for possession of immovable property, its execution takes long time.....”

15. Once again in the case of *Shub Karan Bubna vs. Sita Saran Bubna and Ors. [(2009) 9 SCC 689*] at para 27 this Court observed as under :

> “27. In the present system, when preliminary decree for partition is passed, there is no guarantee that the plaintiff will see the fruits of the decree. The proverbial observation by the Privy Council is that the difficulties of a litigant begin when he obtains a decree. It is necessary to remember that success in a suit means nothing to a party unless he gets the relief. Therefore, to be really meaningful and efficient, the scheme of the Code should enable a party not only to get a decree quickly, but also to get the relief quickly. This requires a conceptual change regarding civil litigation, so that the emphasis is not only on disposal of suits, but also on securing relief to the litigant.”

16. As stated by us hereinabove, the position has not been improved till today. We strongly feel that there should not be unreasonable delay in execution of a decree because if the decree holder is unable to enjoy the fruits of his success by getting the decree executed, the entire effort of successful litigant would be in vain.

> 17. We are sure that the executing court will do the needful at an early date so as to see that the long drawn litigation which was decided in favour of the appellant is finally concluded and the appellant-plaintiff gets effective justice. ”

25. Therefore, upon cumulative consideration of all facts and circumstances in the present case, this petition, warrants dismissal with costs which are assessed to Rs.25,000/-. The costs to be paid within four weeks from today to the decree holders, who, on account of frivolous and misconceived objections raised by the petitioners are yet to receive the fruits of their decree dated 30th June, 1986 obtained by them in a suit which was itself instituted in the year 1978.

26. This Petition is therefore dismissed with costs as aforesaid.

27. All concerned shall act on an authenticated copy of this order.

[M. S. SONAK J.]