

SAS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3095 OF 2019

Mrs.Anita Bandu Jadhav & Ors.

..Petitioners.

V/s.

Altab Hussain Mujawar & Ors.

..Respondents.

Mr.Surel S.Shah for the petitioners.

Mr.Ajay A.Joshi for respondent No.1.

CORAM: M.S.SONAK, J.

DATE : MARCH 12, 2019

ORAL JUDGMENT

Heard Mr. Shah, learned counsel for the petitioners and Mr.Joshi, learned counsel for respondent No.1.

2. Challenge in this petition is to the order dated November 17, 2018 made by the Executing Court rejecting the petitioners' application at Exhibit-60 in Regular Darkhast No.8/2014. By this application, the petitioners had applied to the Executing Court for framing of issue and following the procedure under Order 21 Rule 97 of the Civil Procedure Code ('the CPC' for short).

3. Mr.Shah submits that since in this case, learned Executing Court has rejected the application at Exhibit-60 and since there no revision provided, such an order can always be challenged under Article 227 of the Constitution of India. He relies on the judgment of the Apex Court in the case of *Sameer Singh and Anr V/s. Abdul Rab and Ors.*¹ in support of his contentions.

4. Mr.Shah submits that petitioner No.1 is the daughter of Prakash Bhimrao Sawant, defendant in R.C.S.No.118/2003, yet, the petitioner has an independent right on account of compromise decree made in the partition suit particularly R.C.S. No.280/2013. Mr.Shah, therefore, submits that the Executing Court was duty bound to entertain the petitioners' application under Order 21 Rule 97 of the CPC to frame issues therein and thereafter to decide the same in accordance with law. Mr. Shah submits that since this has not been done, there is clear failure to exercise jurisdiction.

5. Mr.Joshi, learned counsel for respondent No.1 points out that the petitioners had made a detailed application at Exhibit-38 which was dismissed by the Executing Court by a detailed order dated January 16, 2018. For want of challenge, this order has attained finality. Mr.Joshi submits that application at Exhibit-60 was

1 A.I.R. 2015 Supreme Court 591

entirely misconceived and intended only to delay the execution proceedings. Mr.Joshi points out that the decree was made in Regular Civil Suit No.118/2003 on September 19, 2009 and the same was confirmed March 20, 2014. He points out that it is only thereafter that the petitioners and judgment debtor filed a suit for partition whereby a compromise decree was obtained. Mr.Joshi submits that on the basis of the said subterfuge, the execution can neither be stalled nor delayed. Mr.Joshi submits that the petition be dismissed with exemplary costs.

6. The rival contentions now fall for determination.

7. The execution proceedings arise out of the decree dated September 19, 2009 made in R.C.S. No.118/2003. There is no stay to the execution of this decree dated September 19, 2009, even though, the Second Appeal is stated to be pending against the judgment and order dated March 20, 2014 made by the first Appellate Court dismissing the appeal.

8. It is only after the decree dated September 19, 2009 was made and during the pendency of the first appeal that the judgment debtor and his daughter entered into a compromise and on the basis of the said compromise secured compromise decree partitioning the property. It is on the basis of such compromise decree that the

petitioners seek to intervene in the execution proceedings and if possible to stall and delay the proceedings.

9. By detailed order dated January 16, 2018, the Executing Court has dismissed the petitioners' application seeking intervention in the execution proceedings as also the objecting the execution of the decree.

10. The petitioners never challenged the order dated January 16, 2018. Without challenging the order dated January 16, 2018, the petitioners have chosen to press the application at Exhibit-60 which, it is submitted was already filed. The prayer in the application at Exhibit-60 seeks for expeditious disposal of the application at Exhibit-38 by leading evidence and further in the interim, seeks for restraint on the issue of warrant of possession.

11. Since by order dated January 16, 2018, application at Exhibit-38 came to be dismissed, application at Exhibit-60 in fact was rendered infructuous and should have been dismissed on the said ground alone.

12. There is no absolute rule that the Executing Court has to in every case, adopt the procedure of framing of issues and taking evidence in response to any and every application seeking to stall execution of the decree. The parties by filing such frivolous and

misconceived applications would then seek to draw some sort of premium or mileage by insisting upon adjudication, knowing fully well that such matters do not conclude in reasonable time. The parties have to make out atleast an arguable case in such matters.

13. The ruling in *Sameer Singh (supra)* is not at all applicable to the facts of the present case. That was a case where the Executing Court took a view that it had no jurisdiction. In the present case, even the objections raised by the petitioners have been heard and rejected on merits. In fact, once the petitioners' application at Exhibit-38 was rejected, there was no reason to even take up the application at Exhibit-60. In any case, application at Exhibit-60 had become infructuous and was required to be dismissed on that ground alone.

14. The Supreme Court in the case of *Satyawati vs. Rajinder Singh and Anr.*² has made the following observations in this regard to execution proceeding:-

“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 the case of The 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

2 2013) 9 Supreme Court Cases 491

Kuer Jang Bahadur vs. Bank of Upper India Ltd., Lucknow [AIR 1925 Oudh 448],

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 the 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] in para 29 that “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 “.....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 alias Shub Karan Prasad Bubna vs. Sita Saran Bubna and Ors.*

[(2009) 9 SCC 689] at para 27 this Court observed as under :

“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.”

15. The aforesaid observations apply to the facts of the present case as well.

16. For all the aforesaid reasons, the petition is dismissed.

17. There shall be no order as to costs.

18. Mr.Shah states that it may be clarified that this order will not come in the way of the petitioners in case the petitioners desire

to challenge the order dated January 16, 2018. According to me, any challenge to the order dated January 16, 2018 would be barred by inordinate delay and laches. If the petitioners are instituting a petition to challenge the impugned order which was made subsequently, then, obviously, nothing prevented the petitioners from challenging the previous order. The clarification is applied for in order to further prolong the execution proceedings. Since such a request could only contribute to further delay in the execution proceedings and that too on frivolous grounds and subterfuge. No such clarification as applied for, can be granted. The jurisdiction under Article 226 and 227 of the Constitution of India is to promote substantial justice.

(M.S.SONAK, J.)