Sn 3 27.1.21

C.O. 85 of 2021

SUNIL KUMAR UKIL VS. MANJU BANERJEE

Mr. Sabyasachi Mukhopadhyay
Ms. Koushikee Banerjee
..for the petitioner
Mr. Partha Pratim Roy
Mr. S. Halder
Mr.Subhasiss Banerjee
Mr. S. Burman
..for the opposite party

This revisional application is directed against an order dated January 21,2020 passed by the learned Civil Judge, Senior Division, 2nd Court, Krishnanagar, District Nadia in Title Execution Case No. 3, 2017 filed on July 25, 2017 by the defendant in Title Suit No. 8 of 2000 for execution of the compromise decree dated January 10, 2012, passed in Title Appeal No.46 of 2008 by the learned Additional District Judge, 5th Court, District Nadia.

It is the contention of Mr. Mukhopadhyay, learned Advocate appearing for the plaintiff/petitioner that the compromise decree was not executable as it was merely a declaratory decree. The second contention of Mr. Mukhopadhyay is that the decree was not drawn up in terms of the provisions of the Civil Procedure Code, as the costs were not mentioned. The third contention of Mr. Mukhopadhyay is that in the absence of a default clause in the second clause of the (solenama), the direction of the learned court to pay Rs.5,00,000/- with cost and interest in compliance with the 2nd clause of the solenama was erroneous.

Mr. Mukhopadhyay also contended that as no time limit had been fixed for compliance of the second clause of the solenama, the decree was not executable and the defendant aggrieved by such non-compliance of such compromise decree ought to have filed a separate suit.

Mr. Mukhopadhyay refers to Order 20 Rule 6 Sub-rule 2 in support of his contention that the compromise decree should state the amount of costs incurred in the suit and by whom or out of what property and in what proportion such costs were to be paid. This contention of Mr.Mukhopadhyay is not accepted by this Court. The solenama filed in the lower appellate Court was signed by the parties and it clearly stated that the parties would bear their own costs of the suit. The said compromise petition was made a part of the decree and Title Appeal No. 46/2008 was compromised in terms of solenama dated November 8, 2011 without any costs. As the title appeal was compromised in terms of the solenama and clause 2 of the said solenama categorically stated that the parties would bear their own costs, there was no error on the part of the learned lower appellate court in not recording who should bear the costs of the suit or whether the costs were to be borne proportionately.

The next contention of Mr.Mukhopadhyay that the decree was not executable is also not accepted. The decree was not merely a declaration. The total reading of the several clauses in the solenama would reflect that there were three conditions, which the parties had to satisfy in terms of the solenama, which formed the decree. First, that Manju Banerjee shall transfer the schedule property to the plaintiff/petitioner within 15 days from the date of the compromise decree. The plaintiff/petitioner was directed to bear the costs connected with such execution of the deed. Another condition was to be fulfilled by the petitioner. The petitioner was to construct two-bed rooms, one kitchen and one bathroom on the first floor of the house at Dag No. 465, Mouza 170, Khatian No. 1353 within one year, in default, Rs. 5 lakhs was to be paid within three months. The plaintiff was directed to take back the amount deposited in the learned Court below.

As Manju Banerjee did not comply with her part of the solenama, an execution case was filed by the petitioner being Title Execution Case No. 3 of 2012. The said execution case was allowed. The deed was executed through Court. It is an admitted position that the petitioner has taken possession of the concerned suit property and is enjoying the same. As the petitioner did not comply with the clause 2 of the Solenama, Title

Execution case No. 3 of 2017 was filed. In clause 2 of the solenama, it has been stated that the plaintiff also had agreed to construct two bed rooms, one bathroom and a kitchen on the first floor of the house at Dag No.465, within one year and in default, pay Rs. 5 lakhs to the defendant/opposite party, Manju Banerjee within three months. The contention of Mr. Mukhopadhyay is not accepted. The decree was not merely declaratory in nature. A condition was imposed on the plaintiff to do an act, parallel to the condition attached upon the defendant to do certain acts. Clause 2 of the said solenama also forms a part of the decree which has the effect of a condition attached in case of default. The construction was to be made within one year from the decree and in failure thereof, Rs. 5 lakhs should be paid within three months from the expiry of one year period by the plaintiff to the defendant.

This is clearly an executable decree and the execution is maintainable. The decision of this Court is **Shivani Properties Pvt. Ltd. Vs. United Bank of India reported in 2014(1) CHN (CAL) 222** does not help the petitioner, inasmuch as, it has been held in the said decision that the compromise decree was always executable unlike a decree for mere declaration of title. The relevant paragraphs are quoted below :

"**37**. The decree which merely declares the rights of the parties and does not direct any act to be done, in other words, a decree in which no definite order is made which the Court contemplates enforcing by execution, is merely a declaratory decree which is incapable of being executed and only a separate suit and not an application under Section 47 would lie to enforce the rights so declared by the decree. Similarly, a decree which does not provide for a certain relief though it declares a right to such relief is one not capable of being executed. (*Chuni Lal Dutta* v. *Hira Lal Dutta*; 7 CWN 158)

38. A decree based on compromise decree is executable. Where the machinery provided for working out a consent decree fails it is a duty of the Court to fill up the gap caused by such failure by making necessary orders in order that the consent decree may be worked out as agreed between the parties. (*Adelia Dos Remedios* v. *Anand Giri Keni*; AIR 2005 Bom 421, *Smt. Kamla Devi* v. *Addl. District Judge Dehradun*; 1996 AIHC 2292 (All) and *Nebubala Sardar* v. *Abdul Aziz Baidya*; AIR 1991 Cal 402). It is only to that extent an executing Court can step in and pass appropriate orders for working out of the consent decree.

39. To the extent to which any controversy calls for an adjudication, the same can be taken care of by the executing Court which can still compel fulfilment of obligations respectively to the extent to which either party is obliged to do but has failed in discharging the same, like, issuing necessary process, appoint Commissioner or direct detention in civil imprisonment of the party found in breach and thus execute the decree. The consent decree retains its character as a contract because it is founded on agreement between the parties and is, therefore, subject to the incidence of a contract (*Ashok Kumar Sukla* v. *Gahaneshwar Awasty*; 2005 (3) ICC 8 (Cal). The excutability depends upon the intention of the parties as expressed in agreement than on anything else. Where a decree is passed on compromise whereby the defendant agreed to vacate the property after a certain date but there was no remedy provided in case of non-compliance, the decree-holder cannot recover the property in execution. (*Khalli Rath* v. *Eppili Ramchandra*; AIR 1953 Orissa 74)”.

The decision of **Chander Bhan Vs. Banwari Lal reported in 2001 SCC online P&H 346,** does not help the petitioner, inasmuch as, the decree which was sought to be executed before the said High Court, was in the opinion of the said High Court not a compromise decree but a mere settlement arrived at between the parties and the said Court held that when there was a settlement between the parties, on the failure of a party to comply with a portion of the settlement, a separate suit had to be filed for enforcement of the same.

With regard to the decision of the Hon'ble Apex Court in the matter of **Sudhir Kumar & Ors.Vs .Baldev Krishna Thaper & Ors. reported in 1969(3) SCC 611**, the decision does not come in an aid of the petitioner, inasmuch as, what fell for decision before the Hon'ble Apex Court was whether in case a suit was compromised by mentioning a particular period of continuation of a lease, the original renewal clause available in the original lease agreement would be alive or not. The Hon'ble Apex Court held that despite there being a compromise agreement, the renewal clause which was originally available in the original deed of lease would not be negated. The facts of the case are completely different.

The decision of the Hon'ble Apex Court in the matter of **Pushpa Devi Bhagat Vs. Rajider Singh & Ors.**

reported in (2006) 5 SCC 566, also does not help Mr. Mukhopadhyay's client in view of the fact that the Clause 2 of the solenama was in the nature of an act to be done at a future date and also provided the consequence that would follow from the non-compliance of the same. Such a decree is an executable decree as held in paragraph 21 of the said judgement, which is quoted below :-

> "In this case, under the settlement, the tenant undertook to vacate the suit property on a future date (that is 22-1-2002) and pay the agreed rent till then. The decree in pursuance of such settlement was an "executable" decree. Therefore, the settlement did not fall under the second part, but under the first part of Rule 3. The High Court obviously committed an error in holding that the case fell under the second part of Rule 3."

Order 23 Rule 3 of the Code of Civil Procedure deals with compromise of a suit and the Court shall order such agreement, compromise or satisfaction to be recorded and shall pass a decree in accordance therewith, insofar as, it relates to the parties to the suit, whether or not the subject matter of the agreement, compromise or satisfaction was the same as the subject matter of the suit.

In my opinion, the learned lower appellate Court rightly exercised its power under Order 23 Rule 3 of the Code of Civil Procedure. The learned executing court also has rightly held that the said decree was executable.

I do not find any reasons to interfere with the order impugned for the reasons aforesaid.

The revisional application is dismissed.

The time to comply with the order dated

January 21, 2020 is extended by a period of 40 days, if not already complied with.

There will be however no order as to costs.

Urgent photostat certified copy of this order be given to the parties on priority basis, if the same is applied for.

(Shampa Sarkar,J.)