



\$~44 (Appellate)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) 472/2022 & CM No. 23991/2022, CM No. 23992/2022,
CM No. 23993/2022

FEROZE AHMAD Petitioner
Through: Mr. Saqib, Adv. with petitioner

versus

MUKESH MARWAH & ANR. Respondents
Through: Mr. Akhilesh Kr. Pandey,
Mr. Manoj Kumar and Mr. Pankaj Kumar,
Advs. for R-1

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)

% **26.05.2022**

1. This petition, under Article 227 of the Constitution of India, assails orders dated 11th March, 2022 and 7th May, 2022, passed by the learned Additional Senior Civil Judge (“the learned ASCJ”) in Ex. 1203/19 (*Mukesh Marwah v. Pratap Ranjan Sahni*). In the said proceedings, Mukesh Marwah, Respondent 1 herein was the Decree Holder (DH) and Pratap Ranjan Sahni, Respondent 2 herein was Judgment Debtor 1 (JD-1). The petitioner was Judgment Debtor 2 (JD-2).

2. Ex. 1203/19 sought execution of judgment and decree dated 8th April, 2019 in Suit No. 1583/2016 (*Mukesh Marwah v. Pratap Ranjan Sahni & Anr.*) in which Respondent 1 was the petitioner,



Pratap Ranjan Sahni was Defendant 1 and the petitioner Feroze Ahmed was Defendant 2. Respondent 1 had, in the said suit, sought declaration, a decree of possession in respect of the suit property in his favour and against the defendants (i.e. the petitioner and Respondent 2) and damages. The learned ASCJ decreed the suit in the following terms:

“33. In view of my aforesaid findings, the suit of the plaintiff is decreed with the following reliefs :

- A. A decree of possession is passed in favour of the plaintiff and against the defendants in respect of the suit property bearing no. 61-D, DDA MIG Flat, Motia Khan, Paharganj, New Delhi.
- B. A decree for recovery of arrears of rent is passed in favour of the plaintiff and against the defendants amounting to Rs.71,000/- along with interest at the rate of 12 per cent per annum in favour of the plaintiff and against defendant no.1 from the date of institution of the suit till realisation.
- C. A decree for future damages is passed in favour of the plaintiff and against the defendants at the rate of Rs.8,000/- per month for use and occupation charges/mesne profits from the date of filing of the suit till the date of delivery of possession by the defendants to the plaintiff. The plaintiff shall pay appropriate court fee on the amount of damages/mesne profits before the preparation of the decree sheet.
- D. Cost of the suit.”

3. Ex. 1203/19 was filed by Respondent 1 Mukesh Marwah, seeking execution of the aforesaid judgment and decree dated 8th April, 2019.



4. The petitioner filed objections, objecting to the execution of the judgment and decree on the ground that (i) the decree was passed on the last working day of the learned ASCJ, who had kept it reserved, without seeking any clarification from the petitioner, (ii) Respondent 1 was not the owner of the suit premises, (iii) Respondent 1 had failed to prove the documents on which he sought to place reliance, (iv) the witnesses cited by Respondent 1 were planted witnesses, who had neither produced any proof of identification nor did they come from the addresses stated by them, (v) the evidence of the witnesses of Respondent 1, moreover, did not substantiate the case sought to be made out in the plaint, (vi) consequent to passing of the judgment, the files of the suit were misplaced in the office of the petitioner, and could not be traced thereafter, (vii) on going through the judgment, the petitioner noticed that there were “many errors apparent on the face of the record” thereby rendering it a fit case for review, which he intended to file at the earliest, (viii) sans any prayer for declaration of title, a suit could not lie merely for recovery of possession, (ix) documents were filed by Respondent 1 after passing of the decree, and were not exhibited and (x) Respondent 1 had failed to prove the factum of ownership of the suit property beyond all reasonable doubt. Urging that, in the absence of proof of ownership of the suit property by Respondent 1, he would not be entitled to a decree in his favour, the petitioner prayed that his objections be accepted and Ex. 1203/19 be dismissed.

5. The aforesaid objections of the petitioner were taken on record by the learned ASCJ on 7th March, 2020 and Respondent 1 was



directed to reply to the objections within 10 days. On 5th February, 2021, Respondent 1 submitted that he did not desire to file any reply to the objections. The matter was, therefore, re-listed for arguments on the objections of the petitioner on 26th February, 2021. Thereafter, it appears that the matter was adjourned on several occasions, without the petitioner addressing arguments regarding the objections filed by him till. On 9th February, 2022, the learned ASCJ, noted the fact that, despite grant of last opportunity to the petitioner to argue on his objections, he was absent at the time of hearing. He therefore, closed the petitioner's right to argue the matter and directed the matter to be re-listed for orders on 11th March, 2022.

6. The petitioner moved an application, a day prior to the next date of hearing i.e. on 10th March, 2022, praying that the order dated 9th February, 2022 *supra* to be recalled and he be permitted to address arguments on the objections filed by him. The said application was taken up by the learned ASCJ on 11th March, 2022. The petitioner sought to contend that he had not been able to join the proceedings on 9th February, 2022 as he was unable to connect to the proceedings, which were held virtually. Noting the fact that the petitioner had, despite grant of several opportunities, failed to address arguments on his objections, the prayer, of the petitioner, for permission to do so, was rejected. The following paragraph, from the order dated 11th March, 2022, sets out the reasoning of the learned ASCJ on this issue:

“On 09.08.2019, the JD No.2 was granted liberty to file objections to the execution petition and the same were filed on 07.03.2020. Thereafter on 03.07.2020, simple adjournment was granted due to Covid 19 pandemic. On 05.02.2021, the



counsel for DH gave his waiver to file any reply and wished to straightaway argue the matter, but JD No.2 was not present there. Thereafter on 26.02.2021 and 05.10.2021, JD No.2 not appeared. On 05.01.2022, JD No.2 took adjournment as he was not ready to argue the matter and on subsequent date of hearing i.e. on 09.02.2022, JD No.2/applicant not appeared. JD No.2 has also filed the review petition against the judgment and decree dated 08.04.2019 which is pending for 02.04.2022 wherein the affidavits of JD No.2 got attested on 08.02.2022 and matter was listed in the Court for 10.02.2022 where JD No.2/present applicant got his attendance marked, but the present application has been preferred on 10.03.2022. By way of present application, the JD No.2 wants to relegate the time clock back to 09.02.2022 when he not appeared in the matter but was very much present in the Court on preceding and successive day for 09.02.2022. No such application was moved immediately after 09.02.2022 i.e. from the date of said order. Above all, the matter was reserved for orders vide order dated 09.02.2022.

In view of above, the present application under Section 151 CPC filed by JD No.2 for recalling of order dated 09.02.2022 stands dismissed.”

7. The learned ASCJ, nonetheless, went on to adjudicate on the objections filed by the petitioner on merits, and held, in that regard, in para 4 of the order dated 11th March, 2022, thus:

“4. The JDs has not disclosed specifically that how the DH has concealed the material facts from the Court and why the execution petition is not legally maintainable. JDs has also not given any details that how present decree has been passed against all norms. Ld. Predecessor of this Court has complied with orders passed by Hon’ble High Court of Delhi and presided this Court for specific time period and pass the judgment during the tenure of presiding this Court. So, JD No.2 has no ground to challenge the judicial proprietary of this judgment. The contention of JD No.2 that the older cases were to be disposed of before present matter has no legs to stand as there is no hard and fast rule to dispose of the matters according to their number in queue. The JD No.2 also cannot raise question on the ownership of DH to the suit property as



it was the matter of evidence and detailed issue-wise finding has already been given in the judgment, so the present issue raised by the JD No.2 has no worth at this stage. The factum of misplacing of file by JD No.2 from the office of typist Shri Pawan Verma cannot be an impediment in the execution of the present decree. The JD No.2 has taken the stale and rotten objection at the stage of execution with the submission that DH cannot be entitled to possession unless there is suit for title. The JD No.2 has no right to challenge the evidence, in the form of documents, or the mode of proving the document at the time of execution of decree. The JD No.1 has already clarified vide order dated 26.02.2021 that he was not in possession at any point of time and he has no objection qua warrants of possession in favour of the DH.

5. In view of above discussions, the objections filed by JD No.2 and objections argued by JD No.1 are hereby dismissed.”

8. Resultantly, the learned ASCJ directed issuance of warrants of possession in respect of the suit property and warrants of attachment against the judgment debtors – including the present petitioner –*qua* their moveable properties, to secure the decretal amount, as per the list of assets of the judgment debtors. In the absence of any material regarding the list of assets, the judgment debtors (including the petitioner) were directed to file a list of their assets within 10 days.

9. It may be noted, here, that, in the interregnum, the petitioner filed an application, before the learned ASCJ, seeking review of the judgment and decree dated 8th April, 2019. However, there is, admittedly, no interlocutory interdiction against the execution or operation of the judgment and decree.

10. Following the above, on 7th May, 2022, the learned ASCJ



reiterated the directions of issuance of warrants of possession of the suit property as well as warrants of attachment, against the petitioner, *qua* his moveable properties, to the extent of the decretal amount. An application, by Respondent 1, for permission to break open the lock and the door of the suit property, under cover of police protection, and for execution of the warrants of possession, issued by the learned ASCJ was also allowed.

11. The present petition, preferred under Article 227 of the Constitution of India, assails the aforementioned orders dated 11th March, 2022 and 7th May, 2022 passed by the learned ASCJ in Ex.1203/19.

12. The circumstances in which execution of a decree can be legitimately obstructed, and the peripheries of the jurisdiction of the executing Court stand authoritatively delineated by the Supreme Court in *Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman*¹, *State of Punjab v. Krishan Dayal Sharma*² and *Balvant N. Viswamitra v. Yadav Sadashiv Mule*³.

13. In *Krishan Dayal Sharma*³, the Supreme Court held that “the executing court is bound by the terms of the decree, it cannot add or alter the decree on its notion of fairness or justice”.

14. In *Vasudev Dhanjibhai Modi*¹, the appellant Vasudev Dhanjibhai Modi (“Modi”) instituted a suit against his tenant Rajabhai

¹ (1970) 1 SCC 670

² (2011) 11 SCC 212

³ (2004) 8 SCC 706



Munshi (“Munshi”) seeking his ejectment on the ground of default in payment of rent, as well as a decree for payment of arrears of rent. The order of the Court of First Instance, dismissing the suit, was reversed by the learned District Court at Ahmedabad, which proceeded to pass a decree of ejectment against Munshi and in favour of Modi. The High Court of Bombay confirmed the order in a revision application preferred by Munshi. Civil Appeal, preferred by Munshi to the Supreme Court was also dismissed.

15. In the meanwhile, Modi applied for execution of the decree, before the Court of Small Causes. Munshi sought to contend that the suit could not have been tried by the Court of Small Causes and that, therefore, its decree was a nullity and, consequently, incapable of execution. Reliance was placed, for the purpose, on the provisions of the Bombay Rents Hotel and Lodging House Rates (Control) Act, 1947.

16. The objection of Munishi was rejected by the executing court, and an appeal, against the said decision, was also dismissed by the Court of Small Causes. The decision of the Court of Small Causes, was, however, reversed by the High Court of Gujarat, in a petition preferred by Munshi under Article 227 of the Constitution of India. Aggrieved, Modi appealed to the Supreme Court.

17. The Supreme Court noted that the objections regarding the jurisdiction of the Court of Small Causes to try and decide the suit instituted by Modi against Munshi was raised, for the first time, in



execution. Following this observation, paras 6 to 9, of the report held thus:

“6. A court executing a decree cannot go behind the decree: between the parties or their representatives it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties.

*7. When a decree which is a nullity, for instance, where it is passed without bringing the legal representative on the record of a person who was dead at the date of the decree, or against a ruling prince without a certificate, is sought to be executed an objection in that behalf may be raised in a proceeding for execution. Again, when the decree is made by a court which has no inherent jurisdiction to make objection as to its validity may be raised in an execution proceeding if the objection appears on the face of the record: where the objection as to the jurisdiction of the Court to pass the decree does not appear on the face of the record and requires examination of the questions raised and decided at the trial or which could have been but have not been raised, the executing Court will have no jurisdiction to entertain an objection as to the validity of the decree even on the ground of absence of jurisdiction. In **Jnanendra Mohan Bhaduri v. Rabindra Nath Chakravarti**⁴ the Judicial Committee held that where a decree was passed upon an award made under the provisions of the Indian Arbitration Act, 1899, an objection in the course of the execution proceeding that the decree was made without jurisdiction, since under the Indian Arbitration Act, 1899, there is no provision for making a decree upon an award, was competent. That was a case in which the decree was on the face of the record without jurisdiction.*

8. In the present case the question whether the Court of Small Causes had jurisdiction to entertain the suit against Munshi depended upon the interpretation of the terms of the agreement of lease, and the user to which the land was put at the date of the grant of the lease. These questions cannot be

⁴ LR 60 IA 71



permitted to be raised in an execution proceeding so as to displace the jurisdiction of the Court which passed the decree. If the decree is on the face of the record without jurisdiction and the question does not relate to the territorial jurisdiction or under Section 11 of the Suits Valuation Act, objection to the jurisdiction of the Court to make the decree may be raised; where it is necessary to investigate facts in order to determine whether the Court which had passed the decree had no jurisdiction to entertain and try the suit, the objection cannot be raised in the execution proceeding.

9. *The High Court was of the view that where there is lack of inherent jurisdiction in the Court which passed the decree, the executing Court must refuse to execute it on the ground that the decree is a nullity. But, in our judgment, for the purpose of determining whether the Court which passed the decree had jurisdiction to try the suit, it is necessary to determine facts on the decision of which the question depends, and the objection does not appear on the face of the record, the executing Court cannot enter upon an enquiry into those facts. In the view of the High Court since the land leased was at the date of the lease used for agricultural purposes and that it so appeared on investigation of the terms of the lease and other relevant evidence, it was open to the Court to hold that the decree was without jurisdiction and on that account a nullity. The view taken by the High Court, in our judgment, cannot be sustained.”*

18. Para 6 of the report in ***Vasudev Dhanjibhai Modi***¹ was relied upon, by the Supreme Court in ***Balvant N. Viswamitra***³, which went, in detail, into the circumstances in which a judgment or decree could be stated to be null and void for want of jurisdiction. Paras 9 to 18 of the report in ***Balvant N. Viswamitra***³ read thus:

“9. The main question which arises for our consideration is whether the decree passed by the trial court can be said to be “null” and “void”. In our opinion, the law on the point is well settled. The distinction between a decree which is void and a decree which is wrong, incorrect, irregular or not in accordance with law cannot be overlooked or ignored. Where



a court lacks inherent jurisdiction in passing a decree or making an order, a decree or order passed by such court would be without jurisdiction, *non est* and void *ab initio*. A defect of jurisdiction of the court goes to the root of the matter and strikes at the very authority of the court to pass a decree or make an order. Such defect has always been treated as basic and fundamental and a decree or order passed by a court or an authority having no jurisdiction is a nullity. Validity of such decree or order can be challenged at any stage, even in execution or collateral proceedings.

10. Five decades ago, in *Kiran Singh v. Chaman Paswan*⁵ this Court declared: (SCR p. 121)

“It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, ... strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties.”

11. The said principle was reiterated by this Court in *Hiralal Patni v. Kali Nath*⁵. The Court said: (SCR pp. 751-52)

“Competence of a court to try a case goes to the very root of the jurisdiction, and where it is lacking, it is a case of inherent lack of jurisdiction.”

12. In *Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman*¹ a decree for possession was passed by the Court of Small Causes which was confirmed in appeal as well as in revision. In execution proceedings, it was contended that the Small Cause Court had no jurisdiction to pass the decree and, hence, it was a nullity.

13. Rejecting the contention, this Court stated: (SCC p. 672, para 6)

⁵ (1962) 2 SCR 747



“6. A court executing a decree cannot go behind the decree: between the parties or their representatives it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties.”

14. Suffice it to say that recently a Bench of two Judges of this Court has considered the distinction between null and void decree and illegal decree in **Rafique Bibi v. Sayed Waliuddin**⁶. One of us (R.C. Lahoti, J., as His Lordship then was), quoting with approval the law laid down in **Vasudev Dhanjibhai Modi**¹ stated: (SCC pp. 291-92, paras 6-8)

“6. *What is ‘void’ has to be clearly understood. A decree can be said to be without jurisdiction, and hence a nullity, if the court passing the decree has usurped a jurisdiction which it did not have; a mere wrong exercise of jurisdiction does not result in a nullity. The lack of jurisdiction in the court passing the decree must be patent on its face in order to enable the executing court to take cognisance of such a nullity based on want of jurisdiction, else the normal rule that an executing court cannot go behind the decree must prevail.*

7. Two things must be clearly borne in mind. Firstly, ‘the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be “a nullity” and “void” but these terms have no absolute sense: their meaning is relative, depending upon the court's willingness to grant relief in any particular situation. If this principle of illegal relativity is borne in mind, the law can be made to operate justly and reasonably in cases where the doctrine of ultra vires, rigidly applied, would produce unacceptable results.’ (*Administrative Law*, Wade and Forsyth, 8th Edn., 2000, p. 308.) Secondly, there is a distinction between mere administrative orders and the decrees of courts,

⁶ (2004) 1 SCC 287



especially a superior court. ‘The order of a superior court such as the High Court, must always be obeyed no matter what flaws it may be thought to contain. Thus a party who disobeys a High Court injunction is punishable for contempt of court even though it was granted in proceedings deemed to have been irrevocably abandoned owing to the expiry of a time-limit.’ (*ibid.*, p. 312)

8. A distinction exists between a decree passed by a court having no jurisdiction and consequently being a nullity and not executable and a decree of the court which is merely illegal or not passed in accordance with the procedure laid down by law. A decree suffering from illegality or irregularity of procedure, cannot be termed inexecutable by the executing court; the remedy of a person aggrieved by such a decree is to have it set aside in a duly constituted legal proceedings or by a superior court failing which he must obey the command of the decree. A decree passed by a court of competent jurisdiction cannot be denuded of its efficacy by any collateral attack or in incidental proceedings.”

(Emphasis Supplied)

15. From the above decisions, it is amply clear that all irregular or wrong decrees or orders are not *necessarily* null and void. An erroneous or illegal decision, which is not void, cannot be objected in execution or collateral proceedings.

16. More than a century ago, in ***Malkarjun Bin Shidramappa Pasare v. Narhari Bin Shivappa***⁷ the executing court wrongly held that a particular person represented the estate of the deceased judgment-debtor and put the property for sale in execution. *Drawing the distinction between absence of jurisdiction and wrong exercise thereof*, the Privy Council observed: (IA p. 225)

“He contended that he was not the right person, but the Court, having received his protest, decided that he was the right person, and so proceeded with the execution.

⁷ ILR 25 Bom 337 (PC)



In so doing the Court was exercising its jurisdiction. It made a sad mistake, it is true; but a court has jurisdiction to decide wrong as well as right. If it decides wrong, the wronged party can only take the course prescribed by law for setting matters right; and if that course is not taken the decision, however wrong, cannot be disturbed.”

17. In **Ittavira Mathai v. Varkey Varkey**⁸ this Court stated: (SCR pp. 502-03)

“If the suit was barred by time and yet, the court decreed it, the court would be committing an illegality and therefore the aggrieved party would be entitled to have the decree set aside by preferring an appeal against it. But it is well settled that a court having jurisdiction over the subject-matter of the suit and over the parties thereto, though bound to decide right may decide wrong; and that even though it decided wrong it would not be doing something which it had no jurisdiction to do. ... If the party aggrieved does not take appropriate steps to have that error corrected, the erroneous decree will hold good and will not be open to challenge on the basis of being a nullity.”

(emphasis supplied)

18. Again, in **Bhawarlal Bhandari v. Universal Heavy Mechanical Lifting Enterprises**⁹ this Court held that: (SCC p. 563, para 10)

“Even if the decree was passed beyond the period of limitation, it would be an error of law or at the highest, a wrong decision which can be corrected in appellate proceedings and not by the executing court which was bound by such decree.”

(italics and underscoring supplied)

19. Thus, a decree which is null and void as having been passed beyond jurisdiction may legitimately be obstructed in execution. Want of jurisdiction has, however, necessarily, to be patent want of

⁸ (1964) 1 SCR 495



jurisdiction, not requiring any detailed examination on facts and nothing less than that. A decree passed without following the proper procedure or in violation of the law or suffering from any other illegality, or in violation of principles of natural justice, would not be a decree passed for want of jurisdiction. The Supreme Court has also endorsed the principle, otherwise trite in law, that a court is empowered to decide a case rightly or wrongly, and that the mere fact that its decision is wrong would not make the decision inexecutable.

20. Tested on these parameters, the objections raised by the petitioner, to the execution of the judgment and decree dated 8th April, 2019 passed by the learned ASCJ in Suit No. 1583/2016, cannot be said to impinge on the jurisdiction of the learned ASCJ to have passed the judgment and decree dated 8th April, 2019, so as to render the judgment and decree null and void or otherwise incapable of execution.

21. That being so, it is not necessary for the Court to enter into any other aspect of the matter. The impugned order of the learned ASCJ, insofar as it rejects the objections filed by the petitioner must be held to be unexceptionable on facts as well as in law.

22. No occasion arises, therefore, for this Court to interfere with the impugned orders, in exercise of its jurisdiction under Article 227 of the Constitution of India.

⁹ (1999) 1 SCC 558



23. For all the aforesaid reasons, I do not find the impugned orders dated 11th March, 2022 and 7th May, 2022 passed by the learned ASCJ in Ex. 1203/19 vulnerable to interference.

24. This petition is accordingly dismissed *in limine*.

C. HARI SHANKAR, J

MAY 26, 2022/kr

