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IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO.31 OF 2013

Sociedade Verlekar
(through its Administrator
Ashok Roulu Verlekar)
age 57, having Jewellery Shop No. 10
New Market, Margao- Goa
(represented through Power of Attorney
Shri. Anil P. Verlekar) ... Applicant.

Versus

1. Vayshali Jotendra Sarmalkar,
major of age, widow,
r/o E/9, Comba, Margao.
2. Ramesh Vassudev Sarmalkar,
major of age, married,
3. Smt. Rama Ramesh Sarmalkar,
major of age, married,
both having office at 11 Gabriel
Apartments, Erasmo Carvalho
Street, Margao, Goa.
4. Madan Neurekar,
major of age, married,
5. Smt. Suman Madan Neurekar,
major of age, married,
Both r/o 131/1+2 – Plot no. 4,
Andh., Pune 411 07 and also
r/o D Wing, Pancharatna Building,
new market, Margao – Goa.

6. Atmaram S. Angle, (deceased)
major of age, married,

7. Smt. Sujata Atamram Angle,
major of age, widow,
Both r/o Jaiwant, La Campal,
Near Milk booth Center, Panaji.

... Respondents.

Mr. Tarshish Pereira, Advocate for the Applicant.

Ms. Ashwini Agni, Senior Advocate with Ms. Jay Sawaikar,
Advocate for Respondent Nos.2 and 3.

CORAM: BHARAT P. DESHPANDE, J.

DATED: 27 January, 2023

ORAL ORDER:

Revision petition is filed on behalf of the Decree Holder thereby challenging the impugned order dated 15.06.2013 passed in Special Execution Application No.18/06.

2. Heard learned Counsel Mr. Tarshish Pereira for the Applicant and Ms. Ashwini Agni, Senior Advocate along with Ms. Jay Sawaikar, Advocate for Respondent Nos.2 and 3.

3. Learned Counsel Mr. Pereira appearing for the Applicant would submit that though there are two reliefs claimed in the execution application and subsequently another application was filed for disobedience of the orders, entire execution application has been dismissed by the Executing Court. He invited attention of this Court to the findings in the impugned order to submit that only the aspect regarding the prayer clause for detention of the Judgment Debtor in

civil prison was considered and the second prayer regarding attachment of the articles is not discussed at all.

4. Mr, Pereira then submitted that even the findings with regard to disobedience of the order are incorrect and perverse as admittedly there is material to show exhibition of clothes, articles, boards in the verandah itself for which the Judgment Debtors have been prohibited by the decree itself. He submits that there is presumption that since the Judgment Debtors are conducting business of sale of garments and other articles in the shop leased out to them, the verandah and the outer portion of the shop is also used by them only for displaying the garments. He submitted that the said shop exists on the first floor of the building and no one is going to display such garments coming from outside. He invited attention of this Court to the specific decree passed by the First Appellate Court in Regular Civil Appeal No. 128/2004 dated 25.08.2006.

5. Per contra, the learned Senior Counsel Ms. Agni first of all raised the legal aspect regarding the jurisdiction of this Court while entertaining the revision application under Section 115 of the CPC and would submit that scope in the revision is very limited and though there is no legal aspect which has been shown as disputed, revision would require to be dismissed. In this respect, she placed reliance on the following decisions:-

a. D.L.F Housing & Construction Company Private Ltd. vs. Sarup Singh and Ors.¹,

¹ 1971 AIR 2324

b. *Kalidas Chunilal Patel (Dead) by L.Rs. vs. Savitaben & Ors.*²,

c. *Tek Singh vs. Sashi Verma and Anr.*³, and

d. *Sociedade Verlekar vs. Vayshali Jotendra and ors.*⁴

6. The rival contentions fall for determination of this Court as under.

7. In Regular Civil Appeal No. 128/2004, following relief was granted in favour of the Decree Holder:-

“Appeal is partly allowed with costs.

Cross objections are also partly allowed with costs.

Impugned Judgment and Decree to the extent of rejecting the relief to appellants, of restraining the respondents, their agents or servants etc., from using the verandah, parapet of verandah or pillars outside the leased premises and outside the grills is set aside.

Impugned Judgment and Decree holding respondents liable to pay damages at the rate of Rs. 10,000/- per month from March 2002 till they carry out business of garments in the suit premises is set aside.

Impugned Judgment and Decree rejecting the appellants claim of Rs.45,000/- from May 1990 to January 1991 is confirmed.

2 (2016) 12 SCC 544

3 (2019) 16 SCC 678

4 Second Appeal No.8/2007

Appellants claim of Rs.1,000/- towards damage to glasses is also rejected. Condition imposed on the respondents by the Ld. Trial Judge to carry out the business from 8 a.m. to 10p.m. is vacated.

Resultantly, respondents their agents, servants etc., are permanently restrained from displaying or exhibiting or hanging garments, rubber and plastic articles, boards, electrical garlands and loudspeaker on the verandah, parapet of verandah or pillars which supports parapet, outside the leased premises and outside the grills.

8. The Decree Holder immediately filed execution proceedings claiming therein that the Judgment Debtors violated the decree and claimed two reliefs in para no.10 which reads thus:-

“a) Detention of prison of judgment-debtor.

Or

b) Attachment of garments, pants, shirts, Churidars.”

9. The learned Executing Court fixed the matter for inquiry. In the meantime, Decree Holder filed another application vide Exhibit 7 on 16.03.2007 with the following relief:-

“It is therefore prayed that Judgment-Debtors may be detained in prison and in meantime garment like pants, shirts, churidars be attached.

10. A detailed reply was filed by the Judgment-Debtors No.2 and 3 denying the allegations of exhibiting garments and other articles

outside the leased premises and more specifically in the verandah or on the pillars.

11. During inquiry before the learned Executing Court, the Decree Holder examined three witnesses. Similarly, the Judgment-debtors examined three witnesses.

12. After the inquiry was concluded, the learned Executing Court passed a detailed and reasoned order which is impugned in the present revision specifically holding that though the garments and other articles are found exhibited in the verandah and on the pillars outside the shop, the Decree-Holder has failed to prove that such exhibition of garments and other articles is by the Judgment-Debtors and that too in disobedience of the orders and the decree.

13. In the case of *D.L.F. Housing* (supra), the Supreme Court has observed in para Nos. 7 and 8 as under:-

“ The submissions made by Shri Gupte, in our opinion, possess merit. The revisional jurisdiction has been conferred on the High Court by s. 115, C.P.C. in these terms :--

"115. The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such Subordinate Court appears-

(a) to have exercised a jurisdiction not. vested in it by law or

*(b) to have failed to exercise a jurisdiction so vested.
or*

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit."

The mass or reported cases only serve to show that the High Courts do not always appreciate the limits of their jurisdiction under this section. The legal position was authoritatively laid down by the Privy Council as far back as 1894 in Rajah Amir Hassan Khan v. Sheo Baksh Singh(1). The Privy Council again pointed out in Balakrishna Udayar v. Vasudeva Aiyar(2) that this section is not directed against the conclusions of law or fact in which the question of jurisdiction is not involved. This view was approved by this Court in Keshav Deo v. Radha Kissan(3) and has since been reaffirmed in numerous decisions.

8. The position thus seems to be firmly established that while exercising the jurisdiction under s. 115, it is not competent to the High Court to correct errors of fact however gross or even errors of law unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. Clauses (a) and (b) of this section on their plain reading quite clearly do not cover the present case.

was not contended, as indeed it was not possible to contend, that the learned Additional District Judge had either exercised a jurisdiction not vested in him by law or had failed to exercise a jurisdiction so vested in him, in recording the order that the proceedings under reference be stayed till the decision of the appeal by the High Court in the proceedings for specific performance of the agreement in question. Clause (c) also does not seem to apply to the case in hand. The words "illegally" and "with material irregularity" as used in this clause do not cover either errors of fact or of law; they do not refer to the decision arrived at but merely to the manner in which it is reached. The errors contemplated by this clause may, in our view, relate either to breach of some provision of law or to material defects of procedure

affecting the ultimate decision, and not to. errors either of fact or of law, after the prescribed formalities have been complied with. The High Court does not seem to have adverted to the limitation imposed on its power under s. 115 of the Code. Merely because the High Court would have felt inclined, had it dealt with the matter initially, to come to a different conclusion on the question of continuing stay of the reference proceedings pending decision of the appeal, could hardly justify interference on revision under s. 115 of the Code when there was no illegality or material irregularity committed by the learned Additional District Judge in his manner of dealing with this question. It seems to us that in this matter the High Court treated the revision virtually as if it was an appeal.”

14. In the case of *Tek Singh* (supra), the observations in *D.L.F Housing* (supra) are quoted with authority, in para No.7:-

“7) Even otherwise, it is well settled that the revisional jurisdiction under Section 115 CPC is to be exercised to correct jurisdictional errors only. This is well settled. In D.L.F Housing & Construction Company Private Ltd., New Delhi vs. Sarup Singh and Others(1970) 2 SCR 368 this Court held:

The position thus seems to be firmly established that while exercising the jurisdiction under Section 115, it is not competent to the High Court to correct errors of fact however gross or even errors of law unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. Clauses (a) and (b) of this section on their plain reading quite clearly do not cover the present case. It was not contended, as indeed it was not possible to contend, that the learned Additional District Judge had either exercised a jurisdiction not vested in him by law or had failed to exercise a jurisdiction so vested in him, in recording the order that the proceedings under reference be stayed till the decision of the appeal by the High Court in the proceedings for specific performance

of the agreement in question. Clause (c) also does not seem to apply to the case in hand. The words "illegally" and "with material irregularity" as used in this clause do not cover either errors of fact or of law; they do not refer to the decision arrived at but merely to the manner in which it is reached.

The errors contemplated by this clause may, in our view, relate either to breach of some provision of law or to material defects of procedure affecting the ultimate decision, and not to errors either of fact or of law, after the prescribed formalities have been complied with. The High Court does not seem to have adverted to the limitation imposed on its power under Section 115 of the Code. Merely because the High Court would have felt inclined, had it dealt with the matter initially, to come to a different conclusion on the question of continuing stay of the reference proceedings pending decision of the appeal, could hardly justify interference on revision under Section 115 of the Code when there was no illegality or material irregularity committed by the learned Additional District Judge in his manner of dealing with this question. It seems to us that in this matter the High Court treated the revision virtually as if it was an appeal. at Pg.373."

15. The reasons given by the learned Executing Court and that too after appreciation of evidence brought before it by the Decree-Holder and the Judgment-debtors, would suggest that such findings are purely based on facts of the matter. Similarly, the view taken by the learned Executing Court is a plausible view in the facts and circumstances of the case. Such view is not permissible to be replaced or modified while exercising revisional jurisdiction under Section 115 of CPC.

16. The witnesses examined by the Decree-Holder nowhere disclosed that they saw the Judgment-debtors or his employees displaying the garments and other articles in the verandah and on the poles outside the leased premises. Their only contention that they saw exhibition of garments and other articles outside the leased shop. Such observation of these witnesses cannot be construed or presumed that such garments were displayed by the Judgment-debtors only.

17. No efforts were made by the Decree-Holder for asking of attachment of such garments during the pendency of the execution proceedings so as to find out the actual owner of it.

18. Once the Executing Court comes to the conclusion that the Decree-Holder failed to discharge the burden stating that such garments were belonging to the Judgment-Debtors who displayed it outside the shop, granting of both the reliefs is clearly out of question.

19. The learned Senior Counsel appearing for Respondent Nos.2 and 3 is justified in arguing that both reliefs as claimed in the execution application and in Exhibit 7 were considered and rejected by the Executing Court and that too after conducting a detailed inquiry. I find no reason to interfere in the impugned order of the Trial Court. It is well settled that in order to prove disobedience of a judgment or decree, the burden is heavy on the Decree-Holder itself since the consequences are drastic which include imprisonment of the defaulter. In the present matter, since the material was short of such proof, the Executing Court was justified in rejecting both the

prayers and ultimately the execution application, as nothing survives in it thereafter.

20. Having said so, the revision application fails and hence stands dismissed. Parties to bear their own cost.

BHARAT P. DESHPANDE, J.

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FRANCISCO
DSOUZA

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