Serial No. 75

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

Case:- CM(M) No. 18/2024
CM No. 345/2024
Cav No. 2061/2023

M/s Ram Nath Kuldeep Raj and Co. …..Appellant(s)/Petitioner(s)

Through: Mr. Ajay Vaid, Advocate.

Vs

Pawan Kumar and another ….. Respondent(s)

Through: Mr. Sachin Gupta, Advocate
Mr. Raes Un Nissa, Advocate.

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER
(02.02.2024)

(Oral)

1. The petitioner in the instant petition has thrown challenge to order dated 23.11.2023 **(for short "the impugned order")** passed by the Court of Sub Judge, Jammu **(for short "the Executing court")** in case titled as "**M/s Ram Nath Kuldeep Raj & Company Vs. Pawan Kumar & Ors"**.

2. The facts emanating from the record would reveal that the petitioner herein filed an application as an objector in the execution proceedings titled as **"Pawan Kumar and Others Vs. Kuldeep Raj"** filed by the respondent herein for execution of decree dated 11.06.2005, on multiple grounds including that the decree is not capable of being executed owing to the reason that the same has been passed against the individual judgment debtor, namely, Kuldeep Raj *qua* the suit shop which, in fact, had been under the tenancy of a firm, namely, M/s Kuldeep Raj & Co. instead of the tenancy of the said Kuldep Raj.

3. The said application filed by the petitioner herein as the objector came to be entertained by the Executing court after hearing the parties whereupon the objector/petitioner herein led evidence in the matter by filing affidavits of one Muneesh Gupta filed on 12.03.2020, Pawan Kumar, Som Nath, Subash Gupta, Sham Lal and Rakesh Gupta filed on 10.06.2023 and out of the said witnesses, only witnesses Muneesh Gupta and Rakesh Gupta came to be cross-examined by the counsel for the decree holder/respondent herein whereas, the affidavits of the rest of the witnesses were admitted by the decree holder/respondent herein.

4. The objector/petitioner herein, thereafter, maintained an application before the Executing Court on 20.05.2023 seeking therein summoning of witnesses being clerk of the office of the Director, Food and supplies, Jammu along with record of issuance of license dated 09.07.1975 for purchase, supply and storage of kerosene oil being in the name of the objector/petitioner herein as also concerned Inspector along with record of the license issued by the Labour Department under the Shops and Establishment Act in favour of the objector/petitioner herein besides sought summoning of Sh. S. K. Malhotra, Charted Accountant, Chhani Himmat, Jammu along with the record of the returns of the objector/petitioner herein.

5. The aforesaid application came to be filed on 20.05.2023 on the premise that the Executing court did not follow the procedure in the matter *qua* the framing of issues, filing of list of witnesses or else the summoning of the witnesses which resulted into delay in filing of the application on 20.05.2023.

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6. The aforesaid application filed by the objector/petitioner herein came to be opposed by the decree holder/respondent herein whereupon hearing the parties, the trial court passed the impugned order and dismissED the said application in terms of the impugned order. The present petition has been filed on the following grounds:

> "a) That the order impugned is illegal and the learned trial Judge has not exercise the jurisdiction which was vested with him which has resulted in passing of an illegal order.
>
> b) That the order impugned is perverse the law as well as fact. The learned trial judge has observed in the order impugned that the respondent / decree holder has admitted the fact that the petitioner/ objector firm has been running the business of selling kerosene oil from the suit shop since 1970. This observation is perverse the record. The respondent no 1 in his objections as categorically stated that objector is not in possession of the suit shop and he has not received rent from the objector and there is no relationship of landlord and tenant between the respondent no I and the petitioner / objector. The learned trial Judge has drawn such inference from the fact that respondent no I choosed not to cross examine some of the witnesses of the objector which is incorrect and perverse.
>
> c) That the petitioner has not cause any delay in the adjudication of the objections/claims but the delay was caused due to spread of pandemic of covid 19 and for almost 2 years there was no effective proceedings in the case. it is also pertinent to ,mention herein that the learned presiding officer remitted the file to learned District Judge to be transferred to any other court as she had practiced in the chamber of the counsel of the decree holder. This also consumed considerable period of time and ultimately new counsel was engaged by the decree holder. As no issues were framed in the application of the objector and accordingly there was no time limit granted to the petitioner to

furnish his list of witnesses to be examined through the process of court. The reasoning of the learned trial Judge that even if no direction is given to a party for filing list of witnesses the same is obligatory on part of the parties to be filed within first 15 days from the date of direction to party to lead evidence. Order 16 Rule 1 provides that "on or before such date as a court may appoint and not later than 15 days after the date on which the issue are settled, the parties shall present in court a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summons to such persons for their attendance in court. As stated above no issue were framed in the case therefore there was no occasion for the petitioner to file list of witnesses immediately when the learned trial Judge directed adjudication of the objection of the petitioner. The rational in passing the order impugned is perverse the law and order impugned deserves to be set aside.

d) That it is settled law that even if a party fails to name the witness in the list and is unable to produce him on his own under order 16 Rule 1A and in such situation the party of necessity has to seek the assistance of the court under Sub Rule 3 of order 16 CPC, to procure the presence of the witness and the court may, if it is satisfy that the party has sufficient cause for the omission to mention the name of such witness in the list filed under Sub rule 1 of rule l, the court may extend its assistance for procuring the presence of such a witness by issuing a summon to the court. The learned trial Judge has not considered this aspect of the case and has not given any finding with respect to the fact that the petitioner is projecting sufficient reason for summoning the witness through the process of court. The petitioner has stated sufficient reason in his application that the issues were not framed in the case and accordingly no time period was envisaged for furnishing the list of witness and upon showing sufficient cause the court can summon the witnesses, The order impugned is illegal as such deserves to be set aside

e) That the Hon'ble court in exercising of power of superintendence may kindly show indulgence and summon the record of the case from the learned trial court and may, kindly set aside the order impugned and allow the application of the petitioner for summoning the witnesses."

Heard learned counsel for the parties and perused the record.

7. Law is settled that the provisions of the Code of Civil Procedure are intended to achieve the ends of justice and thus regulate the proceedings of the court for ensuring that the parties get sufficient opportunity to put forward their claims by producing their respective evidence which they think proper in support of their respective case. Normally, the courts do not interfere with such rights of the parties unless the court is convinced that the conduct of a party is contemptuous or that a party is grossly negligent or intends to stultify the process of the court in the proceedings by adopting delay tactics by not allowing the court to complete the proceedings and to render its decision in the matter.

8. Having regard to the aforesaid principle of law and reverting back to the case in hand, as has been noticed in the preceding paras, the objector/petitioner herein indisputably filed an application as an objector opposing the execution of decree dated 11.06.2005 somewhere in the year 2019 and the same came to be allowed by the Executing court on 11.10.2019.

9. Record also tends to show that the objector/petitioner herein filed the evidence affidavits of himself as also of his witnesses on 12.03.2020 and 10.06.2023 respectively.

10. It is not in dispute that the application wherein the impugned order has been passed came to be filed by the objector/petitioner herein on 20.05.2023

that is much after the filing of his own affidavit as witnesses on 12.03.2020 and having regard to the facts and circumstances of the case in particular that the fate of decree of 2005 is yet to be decided, as such, the duration of delay in filing the application wherein the impugned order came to be passed cannot be overlooked as also the conduct of the objector/petitioner herein as noticed in the preceding paras which manifestly suggest that the proceedings before the Executing court have got protracted and delayed, on the part of the objector/petitioner herein. The contention of the petitioner is that the Executing court did not follow the procedure in the matter is also not entertainable and pales into insignificance, in that, the petitioner never ever raised any such objection earlier before the Executing court even while leading his evidence.

11. Under the aforesaid facts and circumstances, inasmuch as, in view of the position of law governing and regulating the exercise of supervisory jurisdiction of this Court enshrined in Article 227 of the Constitution of India as laid down by the Apex Court in **"Shalini Shyam Shetty & another Vs. Rajendra Shankar Patil"** reported in **2010 8 SCC 329,** wherein it has been *inter alia* held that in exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercise and that an improper and a frequent exercise of this power will be counter-productive and will divest this extraordinary power of its strength and vitality.

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12. Viewed thus, what has been observed, considered and analysis hereinabove, this Court is not inclined to interfere with the impugned order which seemingly has been passed rightly and validly by the Executing court.

13. Resultantly the petition fails and, accordingly, **dismissed.**

14. Caveat shall stand discharged.

(JAVED IQBAL WANI)
JUDGE

JAMMU
02.02.2024
Shivalee

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No

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सत्यमेव जयते