

13th June,
2025
(AK)
01

C.O 3562 of 2024

Sri Laddu Gopal Bajoria
Vs.
M/s. Bharat Petroleum Corporation Limited

Mr. Arindam Banerjee
Ms. Sulagna Mukherjee
Mr. Ashis Kr. Mukherjee
...for the petitioner.

Mr. Sanjib Kr. Mal
Mr. Bimalendu Das
Ms. Shomrita Das
...for the opposite party.

1. Learned senior counsel appearing for the petitioner argues that the learned executing court acted without jurisdiction in granting stay of an execution case pertaining to a decree of mesne profits granted in favour of the decree-holder/petitioner.
2. It is argued that an appeal was preferred by the petitioner before this court against the non-grant of interest *pendente lite* and future interest in the mesne profits decree, which appeal being turned down, a Special Leave Petition was filed and is now pending in the Supreme Court.

3. However, it is contended that insofar as the basic quantum of the mesne profit is concerned, the decree in that regard still stands and as such, the petitioner/decreed-holder should be at liberty to proceed with the execution case, of course, subject to the outcome of the Special Leave Petition.
4. It is further submitted that the learned trial Judge, without adverting to such aspect of the matter, granted a blanket stay of the execution case, although there is no appeal pending in this court now.
5. Learned counsel appearing for the opposite party/judgment debtor argues that there is a pending application under Section 47 of the Code of Civil Procedure in the executing court at the behest of the judgment debtor/opposite party, where the primary objection taken to the executability of the decree for mesne profits is that the matter pertains to a commercial dispute within the contemplation of the Commercial Courts Act, 2015 (hereinafter referred to as 'the 2015 Act') and as such the trial court did not have jurisdiction to pass the decree itself.
6. Furthermore, learned counsel submits that an appeal was also preferred against the mesne profits decree by the judgment debtor before this court,

accompanied by an application for condonation of delay in filing the same.

7. The condonation application having been dismissed, the appeal was also dismissed consequentially as time-barred and as such, there was no adjudication on merits on the point now being raised.
8. It is submitted that this court, sitting in jurisdiction under Article 227 of the Constitution of India, ought not to interfere with the grant of stay by the executing court, in view of the trial court palpably having no jurisdiction within the contemplation of the 2015 Act to pass the decree itself.
9. Learned counsel submits that in the event the issue pertains to inherent lack of jurisdiction, the matter hits at the very root of the decree and as such the execution cannot be proceeded with.
10. Furthermore, learned counsel cites Section 15 of the 2015 Act to argue that in the event a suit or other proceeding pertains to a commercial dispute, the same has to be transferred to the commercial court having jurisdiction as a matter of course.
11. Upon hearing learned counsel for the parties and examining the scope of the dispute, this court is of the opinion that the dispute which arose in the original suit for eviction and mesne profits does not

come within the purview of “commercial dispute” as defined in Section 2(1)(c) of the 2015 Act.

12. Learned counsel for the judgment debtor/opposite party has argued that the tenancy agreement between the parties pertained to a property where a petrol pump business was being run by the opposite party all along.
13. Thus, the agreement is commercial in nature and, as such, the suit was covered within the contemplation of Section 2(1)(c)(vii) of the 2015 Act.
14. However, a bare perusal of the said provision indicates that to come within the ambit of “commercial dispute”, the dispute, in the first place, has to arise out of (as applicable in the present case) agreements relating to immovable property used exclusively in trade or commerce.
15. In the present case, as per the frame of the original suit, the same was an eviction suit simpliciter, with the consequential relief of mesne profits.
16. The relief of mesne profits cannot be divorced from the principal relief of eviction and was merely consequential to the eviction decree sought by the plaintiff/petitioner.
17. The mesne profits claim was not a standalone monetary claim as such.

18. More importantly, the dispute did not pertain to the agreement for lease.
19. The suit was filed for eviction upon service of a notice under Section 106 of the Transfer of Property Act, which was a statutory relief invoked by the plaintiff/petitioner in the suit and not a dispute relating to any agreement, for tenancy or otherwise.
20. Insofar as the defence of the judgment debtor/opposite party regarding holding over in respect of the suit property is concerned, the same also springs from the statutory right conferred under Section 116 of the Transfer of Property Act, being dependent on the satisfaction of the yardsticks stipulated in the said provision, and is not a dispute arising out of any agreement or the original agreement for tenancy.
21. Thus, the dispute in the suit emanates from statutory rights within the purview of Sections 106 and 116 of the Transfer of Property Act, and is not a contractual dispute arising out of the tenancy agreement or any other agreement.
22. Explanation (a) to Section 2(1)(c) of the 2015 Act provides that a commercial dispute shall not cease to be a commercial dispute merely because it also involves action for recovery of immovable property or for realization of monies out of immovable

property given as a security or involves any other relief pertaining to immovable property.

23. Contrary to the argument of learned counsel for the opposite party, the introduction of the said Explanation strengthens the view that a standalone and independent action for recovery of possession of immovable property does not come within the ambit of a commercial dispute.
24. If suits for recovery of possession of immovable property used for a commercial purpose were in normal course to be “commercial disputes”, there would be no necessity for introduction of Explanation (a) in the statute and a suit for eviction would, in ordinary course, be covered by Section 2(1)(c), in particular Clause (vii) thereof, rendering Explanation (a) redundant. Since it is trite law that the interpretation of a statute cannot be such that a provision thereof is rendered a superfluity, the only valid interpretation would be that ordinarily a suit simpliciter for recovery of possession would not be a “commercial dispute” but, in the same breath, mere introduction of such a relief would not change the commercial character of a dispute if it were otherwise so.
25. Hence, the requirement of Explanation (b) was only for the purpose of preventing parties from bye-

passing the jurisdiction of the commercial court where the dispute arose originally out of an agreement relating to immovable property used exclusively in trade or commerce but wherein merely by introduction of a relief of recovery of possession or realization of monies out of improvable property given as security, litigants would have the opportunity of wriggling out of the jurisdiction of the commercial court.

26. However, as opposed to such a scenario, in the present case, the suit itself was for eviction of the opposite party from immovable property under Section 106 of the Transfer of Property Act, which is a statutory relief claimed by the plaintiff/petitioner, having nothing to do with any dispute arising out of any agreement, whether for tenancy or otherwise.
27. Thus, in view of the above, this court is of the considered view that the premise of the argument of the opposite party regarding lack of inherent jurisdiction of the trial court, not being a commercial court within the contemplation of the 2015 Act, cannot be accepted, at least for the purpose of consideration as to whether the executing court was justified in granting stay.

28. One cannot lose sight of the fact as well that the above considerations were not raised specifically or dealt with in the impugned order at all.
29. The mere premise of grant of stay of the execution case by the impugned order was the pendency of an appeal/revision before this court, which is no longer existent, having already been disposed of.
30. As such, on the face of the reasons given in the impugned order also, the impugned order cannot stand in view of there being no pending appeal and/or revision in this Court and there being no stay order passed by any superior court in respect of the execution case.
31. It is, however, clarified that the above findings are tentative, only restricted to the disposal of the present revisional application, and the observations above are arrived at only in the context of the arguments raised by the opposite party and shall not be binding on the learned executing court at the time of adjudication of the application filed by the opposite party under Section 47 of the Code of Civil Procedure.
32. The executing court shall decide such application as expeditiously as possible, independently and on its own merits, without being prejudiced by the observations made above, preferably within one

month from the date of communication of this order to the executing court.

33. Be that as it may, I do not find any justification or legality in the impugned order or any reason to grant stay of the execution case, as done in the impugned order.
34. Accordingly, C.O. 3562 of 2024 is allowed on contest, thereby setting aside the impugned order dated December 18, 2023 passed by the learned Civil Judge (Junior Division), Fourth Court at Alipore, District- South 24 Parganas in Title Execution Case No.25 of 2021.
35. There will be no order as to costs.
36. Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)