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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SANJAY KISHAN KAUL; J., SUDHANSHU DHULIA; J.
October 30, 2023.
CIVIL APPEAL NO. 6375 OF 2023 (ARISING OUT OF SLP (C) NO.8943 OF 2021)
PRADEEP MEHRA *versus* **HARIJIVAN J. JETHWA (SINCE DECEASED THR. LRS.) & ORS.**

Code of Civil Procedure, 1908; Section 47 read with Order XXI - Executing Court can only go into questions that are limited to the execution of decree and can never go behind the decree. *(Para 5)*

Code of Civil Procedure, 1908; Section 47 read with Order XXI - An execution proceeding works in different stages and if the judgment debtors have failed to take an objection and have allowed the preliminary stage to come to an end and the matter has moved to the next stage, the judgment debtors cannot raise the objection subsequently, and revert back to an earlier stage of the proceeding. *(Para 7)*

Code of Civil Procedure, 1908; Section 47 read with Order XXI - Pure civil matters take a long time to be decided, and regretfully it does not end with a decision, as execution of a decree is an entirely new phase in the long life of a civil litigation. The inordinate delay, which is universally caused throughout India in the execution of a decree, has been a cause of concern with this Court for several years. *(Para 6)*

For Appellant(s) Mr. Sudhir Chandra, Sr. Adv. Mr. Bhagabati Prasad Padhy, AOR Mr. Achintya Dvivedi, Adv. Mr. Bhagabati Prasad Padhy, Adv.

For Respondent(s) Mr. Vinay Navare, Sr. Adv. Mr. Kailash Pandey, Adv. Mr. Ranjeet Singh, Adv. Mr. Krishna Yadav, Adv. Mr. J.k. Mishra, Adv. Mr. Gaichangpou Gangmei, AOR

J U D G M E N T

SUDHANSHU DHULIA, J.

1. This appeal before us shows how the execution proceedings under Order XXI of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC'), are being delayed, and the process is being abused in the execution proceedings, to the peril of the helpless decree holder.

As long back as in 1872 (when the CPC of 1859 was in operation), it was observed by the Privy Council that, *"the difficulties of a litigant in India begin when he has obtained a decree"*[1]. The situation, we are afraid, is no better even today.

2. The appellant is the landlord and the respondents are the tenants in a premises measuring about 3240 sq. ft. bearing C.T.S. No(s). 691/2, 691/3, 691/6, 691/7 and 691/8, situated at Mehra Industrial Compound, Andheri-Kurla Road, Sakinaka, Mumbai (hereinafter referred to as 'suit property'). We will also be referring to them as the decree holder and the judgement debtors respectively.

The landlord, who is more than 70 years of age as of now, had filed a suit for eviction which ultimately resulted in a consent decree on 11.06.2005 where *inter alia,* it was stipulated that in case the judgment debtors (i.e., tenants) fail to pay the rent for two consecutive months, they could be evicted as the decree would become liable for execution.

[1] Raj Durbhunga v. Maharajah Coomar Ramaput Sing, 1872 SCC OnLine PC 16 : (1871-72) 14 Moo IA 605 at page 612

3. The tenants evidently committed a default in payment of rent, and on an application moved by the decree holder, the court vide its order dated 12.02.2013 allowed the application holding that the decree holder/appellant is entitled to execute the decree. Meanwhile, for one reason or another, the proceedings before the executing court were delayed and then the respondents/judgment debtors moved an application before the "executing court" on 19.01.2017 challenging the order dated 12.02.2013 by which the court had allowed the execution of the decree. This as we can see was done nearly four years after the order dated 12.02.2013.

The maintainability of this application was challenged by the appellant/landlord. The executing court vide its order dated 28.09.2017 allowed the objections of the appellant and held that under the garb of the provisions of Section 47 CPC, the respondents/judgment debtors were actually challenging the order of the court dated 12.02.2013, which had allowed the execution of the decree; and which had attained finality.

The order dated 28.09.2017 was challenged by the respondents in revision, where it was set aside by an order dated 22.12.2017. The landlord's writ petition before the Bombay High Court against the above order was dismissed vide the impugned order dated 08.01.2021, and this is how the decree holder is now before us.

The appellate court and the High Court (in exercise of its powers under Article 227 of the Constitution of India), have held that under Section 47 of the CPC, the executing court can decide the matter as to whether the decree can be executed or not.

4.Section 47 of the CPC reads as under:

Section 47. Questions to be determined by the Court executing decree.

(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

* * * * *

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

Explanation 1.-- For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II.-- (a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

(b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.

5. A bare perusal of the aforesaid provision shows that all questions between the parties can be decided by the executing court. But the important aspect to remember is that these questions are limited to the "execution of the decree". The executing court can never go behind the decree. Under Section 47, CPC the executing court cannot examine the validity of the order of the court which had allowed the execution of the decree in 2013, unless the court's order is itself without jurisdiction. More importantly this order (the order dated 12.02.2013), was never challenged by the tenants/judgment debtors before any forum.

The multiple stages a civil suit invariably has to go through before it reaches finality, is to ensure that any error in law is cured by the higher court. The appellate court, the second appellate court and the revisional court do not have the same powers, as the

powers of the executing court, which are extremely limited. This was explained by this Court in *Dhurandhar Prasad Singh v. Jai Prakash University and Others (2001) 6 SCC 534,* in para 24, it had stated thus:

"24. ……. The exercise of powers under Section 47 of the Code is microscopic and lies in a very narrow inspection hole. Thus, it is plain that executing court can allow objection under Section 47 of the Code to the executability of the decree if it is found that the same is void ab initio and a nullity, apart from the ground that the decree is not capable of execution under law either because the same was passed in ignorance of such a provision of law or the law was promulgated making a decree inexecutable after its passing."

This Court noted further:

"……. The validity or otherwise of a decree may be challenged by filing a properly constituted suit or taking any other remedy available under law on the ground that the original defendant absented himself from the proceeding of the suit after appearance as he had no longer any interest in the subject of dispute or did not purposely take interest in the proceeding or colluded with the adversary or any other ground permissible under law.

6. The reality is that pure civil matters take a long time to be decided, and regretfully it does not end with a decision, as execution of a decree is an entirely new phase in the long life of a civil litigation. The inordinate delay, which is universally caused throughout India in the execution of a decree, has been a cause of concern with this Court for several years. In *Rahul S. Shah v. Jinendra Kumar Gandhi and Others (2021) 6 SCC 418,* this Court had observed that a remedy which is provided for preventing injustice (in the Civil Procedure Code) is in fact being misused to cause injustice by preventing timely implementation of orders and execution of decrees. Then, it had observed as under:

"23. …….. The execution proceedings which are supposed to be a handmaid of justice and subserve the cause of justice are, in effect, becoming tools which are being easily misused to obstruct justice."

The above judgment is an important judgment in respect of Section 47 as well as Order XXI, CPC as the three Judge Bench decision of this Court not only condemned the abuse of process done in the garb of exercise of powers under Section 47 read with Order XXI, CPC, but also gave certain directions to be followed by all Civil Courts in their exercise of powers in the execution of a decree. It further directed all the High Courts to update and amend their Rules relating to the execution of decrees so that the decrees are executed in a timely manner. As far as Section 47 is concerned, this Court had stated as under:

"24. In respect of execution of a decree, Section 47 CPC contemplates adjudication of limited nature of issues relating to execution i.e. discharge or satisfaction of the decree and is aligned with the consequential provisions of Order 21 CPC. Section 47 is intended to prevent multiplicity of suits. It simply lays down the procedure and the form whereby the court reaches a decision. For the applicability of the section, two essential requisites have to be kept in mind. Firstly, the question must be the one arising between the parties and secondly, the dispute relates to the execution, discharge or satisfaction of the decree. Thus, the objective of Section 47 is to prevent unwanted litigation and dispose of all objections as expeditiously as possible.

25. These provisions contemplate that for execution of decrees, executing court must not go beyond the decree. However, there is steady rise of proceedings akin to a retrial at the time of execution causing failure of realisation of fruits of decree and relief which the party seeks from the courts despite there being a decree in their favour. Experience has shown that various objections are filed before the executing court and the decree-holder is deprived of the fruits of the litigation and the judgmentdebtor, in abuse of process of law, is allowed to benefit from the subject-matter which he is otherwise not entitled to.

26. The general practice prevailing in the subordinate courts is that invariably in all execution applications, the courts first issue show-cause notice asking the judgmentdebtor as to why the decree should not be executed as is given under Order 21 Rule 22 for certain class of cases. However, this is often misconstrued as the beginning of a new trial. For example, the judgment-debtor sometimes misuses the provisions of Order 21 Rule 2 and Order 21 Rule 11 to set up an oral plea, which invariably leaves no option with the court but to record oral evidence which may be frivolous. This drags the execution proceedings indefinitely."

This Court then gave certain directions, which were to be mandatorily followed by all Courts dealing with civil suits and execution proceedings. Two of its directions were as follows:

"42……..

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42.8. The court exercising jurisdiction under Section 47 or under Order 21 CPC, must not issue notice on an application of third party claiming rights in a mechanical manner. Further, the court should refrain from entertaining any such application(s) that has already been considered by the court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.

……...

…….

42.12. The executing court must dispose of the execution proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.

42.13.……..."

It further directed all the High Courts to update their Rules relating to execution of decrees. It was as under:

"43. We further direct all the High Courts to reconsider and update all the Rules relating to execution of decrees, made under exercise of its powers under Article 227 of the Constitution of India and Section 122 CPC, within one year of the date of this order. The High Courts must ensure that the Rules are in consonance with CPC and the above directions, with an endeavour to expedite the process of execution with the use of information technology tools. Until such time these Rules are brought into existence, the above directions shall remain enforceable."

We have referred to the above decision of this Court only to highlight the slow process in the execution of a decree and the concern of this Court, and its efforts in the past, to improve this situation.

7. The respondents herein are the tenants in the suit property at least since 1996. The present appellant is the landlord. The dispute between them was of sub-letting which led to the eviction suit before the Small Causes Court. During the proceedings, a settlement was arrived at between the parties, *inter alia* stipulating that the tenants would be liable for eviction if they commit a default of payment of rent for two successive months. According to the appellant / landlord, the tenants committed a default which led to the filing of the application under Order XXI Rule 11, CPC for execution of the decree. The executing court vide its order dated 12.02.2013 held that the decree is liable to be executed. This order was admittedly never challenged in appeal by the judgement debtor and has attained finality.

On 19.01.2017, i.e., nearly four years later, the judgement debtors moved an application before the executing court to set aside the order dated 12.02.2013, reiterating their previous stand that the tenants had never committed any default in payment of rent. Objection to the very maintainability of such an application was raised by the decree holder, *inter alia* on the grounds that the order dated 12.02.2013 has attained finality and cannot be reopened. The executing court, to our mind, took the correct decision in allowing the objections of the decree holder and dismissing the application filed by the judgement debtors on the ground of maintainability. The reasons given by the executing court are as follows:

"8. Admittedly, the judgment debtor no. 1(a) to 1(e) and judgment debtor no. 2 have contended through their reply Exh. 20 that they are objecting to the execution of decree dated 11.06.2005 by way of application Exh. 18. It is also true that this Court being the Executing Court can consider the objections relating to the execution of decree under Section 47 of The Code of Civil Procedure, 1908. However, it is also settled principle of law that, this Court being a Executing Court cannot go behind the decree and has to execute the decree as it is. It needs to be mentioned at the cost of repetition that, already the Misc. Notice no. 152 of 2006 is decided by my learned predecessor by way of order dt. 12.02.2013. The said notice was contested by the judgment debtor no. 1(a) to 1(e) and judgment debtor no. 2. It was held that the present decree holder is entitled to execute the decree against the judgment debtors. It needs to be mentioned that, the said order is not challenged by the judgment debtor no. 1(a) to 1(e) and judgment debtor no. 2 before the appropriate forum. If the said fact is taken into consideration, indeed there is considerable substance in the argument of the learned Advocate for the decree holder that, the said order dt. 12.02.2013 has attained finality and now it is open to the judgment debtor no. 1(a) to 1(e) and judgment debtor no. 2 to agitate the same point again under the pretext of objection to the execution of decree.

9. That apart, what is most important is that this Court is not sitting in appeal against its own order. Also, it is not the case of the judgment debtor no. 1(a) to 1(e) and judgment debtor no. 2, that the order dated 12.02.2013 passed by my learned predecessor in Misc. Notice no. 152 of 2006 was passed without jurisdiction. Also, the ground of fraud or ex-parte passing the order dt 12.02.2013 is not raised by the judgment debtor no. 1(a) to 1(e) and judgment debtor no. 2 in the application Exh. 18. The Misc. Notice No. 152 of 2006 was decided on merits after due hearing both sides and the said order is not challenged before the appropriate appellate/revisional forum. If the said fact is considered, there can be hardly any doubt that the application Exh. 18 taken out by the judgment debtor no. 1(a) to 1(e) and judgment debtor no. 2 is nothing but an attempt to re-open the order passed on 12.02.2013 in Misc. Notice no .152 of 2006 under the garb of objection to the execution of decree which is not permissible particularly when already the said notice is decided on merit and is not challenged till date. Considering the said fact, I have no hesitation to hold that, the application Exh. 18 is not maintainable."

As we have already referred above, this order was taken in revision by the judgment debtors, where the revision was allowed and the order dated 28.09.2017 was set aside. The decree holder moved a petition before the Bombay High Court under Article 226/227 of the Constitution of India and the main ground taken before the High Court was that the revisional court fell into an error in holding that the application moved by the judgment debtors for setting aside the order dated 12.02.2013 comes within the purview of the power of the executing court given to it under Section 47 of the CPC. It was submitted by the decree holder before the High Court that the order dated 12.02.2013 had attained finality and *res judicata* would apply against the judgment debtors. In support of the submission the decree holder relied upon a decision of this court given in *Barkat Ali & Anr. vs. Badrinarain (D) by Lrs.* 2008 (4) SCC 615, where this court reiterated the settled position of law that the principles of *res judicata* are not only applicable in respect of separate proceedings but the general principles of *res judicata* are also applicable at the

subsequent stage of the same proceedings and therefore the same court will be precluded to go into that question which has already been decided, or deemed to have been decided by it in the earlier stage. In other words, it will be barred by the principle of *res judicata,* or at least by the principle of constructive *res judicata*. The logic here is that an execution proceeding works in different stages and if the judgment debtors have failed to take an objection and have allowed the preliminary stage to come to an end and the matter has moved to the next stage, the judgment debtors cannot raise the objection subsequently, and revert back to an earlier stage of the proceeding. This is exactly one of the reasons given by the executing court in its order dated 28.09.2017 which we have already referred above. Merely, because it has not specifically referred to the principle of *res judicata* will not make any difference.

The High Court even though found substance in the arguments of *res judicata*, nevertheless refused to interfere in the petition.

"9. The fact remains that when Exhibit-18 or Exhibit 19 was dealt with by the executing court, the issue of operation of principle of res judicata was not at all addressed by either of the parties and even the executing court so also Appellate Bench has no occasion to deal with the said issue. True it is the issue of question of law can be raised at any stage. However, that by itself will not call for exercising extraordinary jurisdiction in the present matter when aforesaid issue was not addressed before the courts below.

10. In that view of the matter, in my opinion, Petition deserves to be disposed of with the observation that the issue of res judicata as is raised by the Petitioner be also looked into while dealing with the issue raised in ApplicationsExhibits-18 and 19."

8. The High Court, to our mind, committed an error by not interfering in the matter. To our mind this case has unnecessarily been dragging on for so long; which is for nearly two decades.

The order dated 22.12.2017 by the Appellate Court and the order dated 08.01.2021 by the High Court are not sustainable in the eyes of law. We therefore allow the appeal and set aside the order of the High Court dated 08.01.2021 and the order of the appellate court dated 22.12.2017, while we uphold the order of the executing court dated 28.09.2017.

The executing court is hereby directed to proceed with and complete the execution as expeditiously as possible, but at any event within a period of six months from the date a copy of this order is placed before the court. The interim order dated 27.07.2021 hereby stands vacated.