M/s. Durga Trading Company Vs Ashwani Kumar

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 12, 2013

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 41 Rule 27
East Punjab Urban Rent Restriction Act, 1949 â€" Section 12

Citation: (2013) 4 PLR 829

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: Ashish Aggarwal and Ms. Ritu Pathak, for the Appellant; Kanwaljit Singh and Mr. Surajpreet Singh, for the Respondent

Final Decision: Dismissed

Judgement

K. Kannan, J.
The civil revision is at the instance of tenants, who had been ordered to be evicted under the provisions of East Punjab

Urban Rent Restriction Act. The landlord had filed the petition for eviction on the ground that the building was unsafe and unfit for occupation. The

condition of the building had been assessed by appointment of three local commissioners and reports of experts, all of which yielded to one finding

that in some portions of the building, there had been no roof; the building was more than 100 years old and the property was required to be

demolished and was not reparable. The condition of the building itself could not have been a major issue but the tenant sought to introduce an

important additional line of defence at the lower Appellate Court when he filed the petition for reception of additional evidence under Order 41

Rule 27 bringing out an arbitral award in terms of which a decree had been passed, that settled the issue of eviction between the landlord and

tenant. The arbitral award had been rendered under the Arbitration Act of 1940 and contained a provision for effecting reconstruction of the

building in various stages, when the tenant was required to cooperate to the landlord and allow for such reconstruction without any obstruction.

The liability apportioned to the tenant was that he must bear the expenses to the tune of Rs. 12,000/-. Originally when the award was filed before

the Court of 1st Instance, on the objection taken by the tenant, the claim of the landlord for carrying out the terms failed and only in an appeal by

the landlord, a decree was passed in terms of the award giving legitimacy through the Court decree to the directions given by the Arbitrator. The

arbitral award had not been referred to in the pleadings and therefore, when the tenant sought to file the award for contending that the landlord

could not obtain ejectment but was only to reconstruct the building and allow the tenant to continue, the lower Appellate Court rejected the

additional evidence sought to be introduced by the tenant as without basis and ordered eviction. In the civil revision filed before this Court, a Single

Judge of this Court had observed that the document would require a fresh consideration and therefore, directed remand of the matter to the lower

Appellate Court again for deciding the case afresh. This direction of this Court was taken in Supreme Court by the tenant again in Civil Appeal

No. 1413 of 2005. The Supreme Court had directed that the case ought not to have been remanded and the High Court should itself consider the

relevancy of the additional document brought before the Court and decide the revision petition in accordance with law. The point for consideration

now, therefore, would be whether the additional evidence which was brought by the tenant referring to certain directions for carrying out the

reconstruction should be applied in favour of the tenant and defeat the landlord''s action for eviction.

2. The relevancy of any document will have to be tested on two grounds. One, the points for adjudication in the suit and how the document relied

on will have a bearing for resolving the dispute. Two, what is the nature of pleading by the parties that allow for reliance of the particular document

by the person, who seeks for such reliance. I take it that when the Supreme Court was directing the consideration for relevancy of the document, it

had taken note of one line of objection that was possible for the landlord to contend that there was no justification for not filing the document

before the trial Court and introducing the same by means of an additional document at Appellate Court only. I will, therefore, not examine the

delay aspect for this document to have been produced and stay confined only to the two parameters set out above.

3. When the landlord was contending that the building was unfit and unsafe and therefore, the condition of the building had to be assessed by

examination with reference to records and the reports of experts, any document that had bearing to the condition of the building was surely

relevant. If the decree passed by this Court subsequent to the arbitral award was, therefore, being relied on to ascertain the condition of the

building and the entitlement of the landlord to seek for ejectment, they were surely relevant but in this case even apart from the report of the

experts, the directions in the award and the decree that was passed are being relied not for proving the condition of the building but to deny to the

landlord the right of ejectment since the decree provided for a manner of enforcement of the right of the landlord in a particular way. The issue,

therefore, was whether the landlord could be denied his right of ejectment because of some directions contained in the decree that allowed for the

manner of working out the rights. Some proceedings, which have taken place before the Court, subsequent to the arbitral award must be examined

to see how the parties understood their own rights as emanating from the award that was made the rule of Court.

4. The award was passed by the Arbitrator on 11.10.1984. The arbitrator''s award contains, inter alia, the following directions:-

1. The landlord Ashwani Kumar shall reconstruct the shop in dispute and for which he shall get the plan sanctioned from the Municipal Committee,

Karnal. He shall start the construction within fifteen days of the sanctioning of the plan.

2. Before the start of the construction, the tenant shall pay a sum of Rs. 12,000/-, rupees twelve thousand in advance to the owner and which

amount shall be adjusted in future rent.

3. The day the shop will be reconstructed and ready, from that day, the tenant shall pay Rs. 1,000/- as rent per month to the landlord and shall pay

the house tax and electricity bill separately.

4. on the start of new construction, the tenant shall not obstruct the coming of the mason and labourers.

(underlining mine).

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5. The expressions used in the award that a reconstruction was to be done, surely, even in the year 1984 was a finding that it was not in a

reparable state. In an issue of merely a repair, there could have been hardly a scope for asking the tenant to share the expenses. In this case, the

Arbitrator was making a direction for contribution of Rs. 12,000/- in the construction. The tenant was not willing to undertake such a liability.

When the landlord was applying to the Court for making it rule of Court, the tenant contested the same and ensured that his objection prevailed

and the award was set aside. The award was indeed set aside by the Court of 1st Instance and only in appeal filed, the decree was passed by the

Appellate Court and the directions of the Arbitrator could have, therefore, worked out only thereafter. At this stage it appears that the tenant

would have nothing of reconstruction to be made and therefore, filed an application for carrying out repairs u/s 12 of the East Punjab Urban Rent

Restriction Act. This application was dismissed and upheld in higher forums as well. When the landlord filed, therefore, a petition for eviction in a

situation where the tenant was not prepared to contribute Rs. 12,000/- and contested the matter before the Court of 1st Instance against grant of

decree in terms of the award and was only pressing forth for carrying out the repairs from landlord, he could not have secured any other relief to

secure possession than applying for eviction. It should have been possible for the defendant to contend at that time that he was willing to participate

in the expenses in the manner in which it was drawn by the Arbitrator''s award and should have averted threat of eviction and seek for enforcement

of the rights protected under the arbitral award that was made the rule of Court.

6. At the time when the landlord, therefore, filed a petition for eviction the appropriate defence could have been to stay the proceedings and allow

for execution of the decree passed by the Civil Court in terms of the award. That would have surely ensured that the building was reconstructed

and secured to the tenant a right of continuing in possession when the construction was being completed. The arbitral award that became a decree

was not put in execution. It was now merely pleaded in defence to stave off a claim for ejectment by stating that the decree allowed for

continuance of possession. If such a continuance was possible when the reconstruction was being made, it should have been the basis of pleading

so that the Court could have allowed for the tenant to apply for execution of the decree and secure the rights as provided. Merely putting up

decree in defence does not carry home any advantage to the tenant. If the tenant was only relying on the decree passed to reject the landlord''s

contention then it should only be seen whether the decree was enforceable at this length of time. The decree contained mutual obligations namely of

the landlord''s duty to reconstruct the building and the tenant''s duty to share the expenses for the reconstruction. Either way, unless the party had

put the decree in execution, it could not come in the way of the landlord''s application for ejectment. The tenant was not even prepared to refer to

this in his defence to non suit the petitioner in his claim for ejectment. He was probably labouring under an apprehension that it caused liability on

him and therefore, it was not useful for him to refer to the same.

7. The second consideration of whether a document which is relevant could be admitted should be seen, therefore, in the context of what the plea

was. Every relevant fact does not secure an admission as proof, unless it is properly pleaded. Though Rent Controller proceedings may be taken

as summary and therefore, the rules of pleadings may not be strictly construed, in this case I would find the reference to the arbitral decree in the

pleadings become relevant, for it gives some rights to be enforced and if the respondent was not prepared to set up the decree and make way for

enforcement of certain rights, it should only be taken that he had waived those rights which the decree secured. In B.L. Sreedhar and Others Vs.

K.M. Munireddy (Dead) and Others, the Supreme Court has explained the difference among the concepts of estoppel, relinquishment and waiver.

No option is available when estoppel comes into play, as is available in the case of waiver and relinquishment. The landlord could have been

estopped from seeking for ejectment, if the tenant had opted to share the expenses and suffered the detriment. Without a detriment and altering the

position by one party, there is no estoppel against the other party. A plea available to stave off ejectment and an obligation cast on him to enjoy

that right by incurring the expenditure, had been waived by the tenant by failing to put the decree in execution or offering to make the payment.

After all, even a decree that is passed has a limited period of enforceability. A decree that provided for reconstruction of the building and caused a

liability for contribution could not have, for all times remained a sanctified document, unless the parties were prepared to enforce the same. The

period of enforcement of a decree is 12 years under Article 136 of the Limitation Act. In this case, if neither parties secured enforcement of the

decree and the landlord was applying for ejectment, the same could not have been denied to him, unless there was any bar of estoppel. If the

condition of the building as old and dilapidated had been sufficiently established such as in this case where there was voluminous evidence and the

both the Courts below have held so, the action for eviction could not be defeated.

8. At some point of time, I was of the view that the case would require to be settled between the parties and allowed for a reference to mediation

but it has failed. The parties could not make headway through readjustment of their respective claims. The case has to, therefore, be resolved only

through the ingredients of law of what is a plain application of the legal principles involved in this case. The orders of eviction passed by the Courts

below are confirmed and the revision petition filed by the tenant is dismissed. The building is already old and it appears that the tenant has

reconstructed some portions to allow for continuance during this long tenure of litigation. He shall be entitled to remove any construction which he

has put up for his own safety in the building. Having regard to the ground on which eviction was sought namely on the unfit and uninhabitable

condition, there shall be no further period given for removing himself. It shall be effected forthwith. The revision petition is dismissed with costs

through out counsel''s fee Rs. 10,000/-