
(2015) 04 RAJ CK 0133

Rajasthan High Court

Case No: Civil Revision Petition No. 241 of 2014

Khushal Singh

APPELLANT

Vs

Indo Bai and Others

RESPONDENT

Date of Decision: April 13, 2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) - Order 20 Rule 20, Order 21 Rule 11, 115, 151#Contract Act, 1872 - Section 55#Limitation Act, 1963 - Section 12(2), 5#Specific Relief Act, 1963 - Section 28

Citation: (2015) 04 RAJ CK 0133

Hon'ble Judges: Pratap Krishna Lohra, J

Bench: Single Bench

Advocate: Kailash Khatri, for the Appellant

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Pratap Krishna Lohra, J.

Petitioner-decree-holder has filed this revision petition under Section 115 of the Code of Civil Procedure, 1908

(for short, "CPC") for assailing the order dated 1st of August, 2014 passed by learned Addl. District Judge, Suratgarh in Civil Execution Case

No. 13/2012, whereby his application under Section 5, Limitation Act and Section 151 CPC has been rejected.

2. The bare necessary facts of petitioner"s case, relevant for deciding the controversy, are that original suit No. 15 of 1995 (120/90) was filed by

him for specific performance of contract on 28.04.1990 against one Pritam Singh, the original defendant, who died during the pendency of the suit,

therefore, his Legal Representatives were taken on record. The LRs of Pritam Singh filed compromise in the Court below and in light thereof the

suit was decreed on 17.05.1997 but the LRs of original defendant did not honour the decree despite the fact that the disputed land was mutated in

their names including son of original defendant Foja Singh on 05.04.2010, therefore, he had to file Execution Proceedings against Foja Singh as

well as other Legal Representatives of original defendant on 11.06.2010 alongwith application under Section 5 of the Limitation Act before the

learned Court below. The learned executing Court dismissed the said application as well as execution petition. It is averred by the petitioner in

revision petition that after receiving copy of the Land Transfer Register he came to know about the death of Foja Singh s/o Pritam Singh, as such

has now impleaded the legal heirs of Foja Singh also in this revision petition.

3. The defendant/judgment-debtors appeared in the execution proceeding and filed reply to the application under Section 5 Limitation Act read

with Section 151 CPC praying for dismissal of the execution proceeding on the ground that it is barred by limitation since it has been filed after the

prescribed period of 12 years. It is also pleaded that period of limitation has reckoned from the expiry of one month from passing of the decree,

therefore, laying execution after 13 1/2 years is per se barred by limitation which is not condonable.

4. The learned Court below, after considering the rival submissions, vide the order impugned, rejected petitioner"s prayer for condonation of delay

and consequently dismissed the execution petition.

5. Learned counsel for the petitioner, Mr. Kailash Khatri, has vehemently argued that while passing the impugned order, the learned Court below

has not examined the matter in entirety and therefore the impugned order is not sustainable in the eye of law. Learned counsel Mr. Khatri submits

that the land in dispute was mutated in the name of LRs of original defendant only on 05.04.2010 and thereafter the petitioner requested them to

execute sale-deed as per compromise decree but they did not respond to his request and made an attempt to sell the disputed land to some other

persons, which prompted him to file the execution proceeding before the Court below immediately on 11.06.2010, but this aspect of the matter

was not considered by the learned Court below which has made the order impugned vulnerable. Learned counsel argues that in the suit for specific

performance of contract, the matter was set at rest by the compromise decree against which the judgment debtors did not prefer any appeal and

hence the decree became executable, was a very vital issue, which has not been appreciated by the learned Court below. Learned counsel would

contend that the executing Court is bound to execute the decree in letter and spirit. In support of his contentions, Mr. Khatri has placed reliance on

following judgments:

1. Deep Chand and Ors. Vs. Mohan Lal [III (2000) SLT 534]

2. Akshoy Kumari Vs. Nalini Ranjan [AIR (37) 1950 Calcutta 493]

3. Mst. Parmeshri and Others Vs. Mst. Atti, AIR 1958 P&H 79

6. Heard learned counsel for the petitioner and scanned the material available on record.

7. The compromise decree, as passed by the learned Court below, was a conditional decree, under which the purchaser/deed-holder was

required to get sale-deed executed in respect of 8 bighas of land and the entire transaction was to be concluded within one month from the date of

decree. Despite the specific period of one month specified in the decree, the petitioner did not get the sale-deed executed within the period of one

month. As such, the decree had become voidable and could not be enforced by way of Execution Proceeding in view of the provisions of Section

55 of the Indian Contract Act. Further, since time was the essence of the compromise decree, it is deemed to be void due to non-compliance

within the stipulated period and therefore decree cannot be enforced under law after a lapse of period of more than 13 years in view of the

provisions of Section 28 of the Specific Relief Act.

8. The stand taken by the petitioner-plaintiff decree-holder that the respondent-judgment-debtors, who had filed the compromise, refused to

cooperate with the plaintiff-decree-holder for execution of sale-deed and had intentionally delayed the matter on one pretext or the other, and

consequently the decree-holder was constrained to file the execution petition, is not tenable in view of the fact that the suit filed by the petitioner-

plaintiff, against original defendant, the predecessor in title of respondent-defendants, for specific performance of the contract, was decreed in

terms of the compromise arrived at between the parties and the learned Court below as per the terms of compromise, passed the decree. The

respondent-defendants had agreed to execute the sale-deed in respect of 8 bigha of land and get the same registered. The entire transaction was to

be completed within one month from the date of decree. Apparently, time was stipulated as the essence of contract as per the conditions of the

agreement, however, the compromise decree was not executed within the stipulated period of one month and had continued to remain unexecuted

till the year 2010, i.e., for more than thirteen years. The plaintiff decree-holder did not obtain extension of the period from the Court below, which

had passed the decree, nor did he file the execution proceeding promptly after expiry of the one month stipulated period. Instead, he chose to

initiate the execution proceeding after more than thirteen years from the date of decree. Therefore, the execution proceeding is clearly barred by

limitation inasmuch as time for execution of the decree was stipulated in the terms of compromise itself, which had formed part of the decree, and

the decree-holder having not made any effort to get the decree executed within the period stipulated, the attempt to get the decree executed after a

lapse of more than thirteen years cannot be countenanced.

9. The decree was essentially for specific performance of contract and period of one month from the date of decree was stipulated for its

performance. If for any reason, the performance was not made within the period stipulated, then the decree-holder ought to have sought for

extension of period from the Court, which had passed the decree, and get sale-deed executed. In the present case, the facts are that though the

decree as per the terms of agreement, was executable within a period of one month from the date of decree, but the same was not executed for

more than thirteen years from the date of decree. The decree-holder did not choose to get the period extended by the Court, and after more than

thirteen years filed the execution petition seeking execution of the decree. The judgment-debtor-respondents though did not file any separate

petition for rescinding the contract but had objected to the execution on the ground of limitation expressing thereby that the agreement/compromise

for specific performance had become voidable at the option of the judgment-debtor and they are therefore not liable to perform their part of the

contract.

10. The legal precedents, on which the learned counsel for the appellant has placed reliance, are factually distinguishable. The judgment in Deep

Chand"s case (supra) is clearly distinguishable for the reason that that in that case the execution application seeking possession of land was filed

within the limitation period of 12 years whereas in the instant case the execution proceeding was initiated after the expiry of limitation period

delayed by one and half years. Therefore, in the backdrop of the facts and circumstances of the instant case, the said case relied upon by the

petitioner cannot render any assistance to the petitioner. The other two cases, relied on by the petitioner for taking a liberal view and not a

technical construction, are also of no help to the petitioner in view of the decision of Hon"ble Apex Court in V.S. Palanichamy Chettiar Firm Vs.

C. Alagappan and Another, AIR 1999 SC 918 : (1999) 1 CTC 409 : (1999) 1 JT 216 : (1999) 1 SCALE 219 : (1999) 4 SCC 702 : (1999) 1

SCR 349 : (1999) 1 UJ 486 : (1999) AIRSCW 481 : (1999) 1 Supreme 389 in which extension of time was prayed for by the decree-holder

after five years of the date of decree and the Hon"ble Court considering the facts of that case, held that though the executing Court, being the same

Court, which had passed the decree, had the discretion to extend the time, but considering the delay of more than five years, observed that equity

demand that discretion be not exercised in favour of the decree-holder and no extension of time be granted to comply with the decree.

11. It is trite that law of limitation is to be construed strictly in execution proceedings and provisions under Section 5 and 12(2) of the Limitation

Act are not applicable vis-a-vis execution proceedings. Reliance in this behalf can be profitably made to a decision of Hon"ble Apex Court in

West Bengal Essential Commodities Supply Corporation Vs. Swadesh Agro Farming and Storage Pvt. Ltd. and Another, AIR 1999 SC 3421 :

(1999) 6 JT 599 : (1999) 123 PLR 618 : (1999) 5 SCALE 504 : (1999) 8 SCC 315 : (1999) 2 SCR 399 Supp : (2000) 1 UJ 107 : (1999)

AIRSCW 3401 : (1999) 7 Supreme 629 , wherein the Court held:

19. Under the scheme of the Limitation Act, execution applications, like plaints have to be presented in the Court within the time prescribed by the

Limitation Act. A decree-holder does not have the benefit of exclusion of the time taken for obtaining the certified copy of the decree like the

appellant who prefers an appeal, much less can he claim to deduct time taken by the Court in drawing up and signing the decree. In this view of the

matter, the High Courts of Patna and Calcutta in Sri Chandra Mottli Deva v. Kumar Binoya Nand Singh and Ors. and Sunderlal and Sons v.

Yagendra Nath Singh and Anr. Have correctly laid down the law; the opinion to the contra expressed by the High Court of Calcutta in Ram

Krishna Tarafdar v. Nemai Krishna Tarafdar is wrong. Section 5 of the Limitation Act has no application; Section 12(2) of the Limitation Act is

also inapplicable to an execution petition. If the time is reckoned not from the date of the decree but from the date when it is prepared, it would

amount to doing violence to the provisions of the Limitation Act as well as of Order 20 and Order 21 Rule 11 C.P.C. which is clearly

impermissible.

12. Therefore, viewed from any angle, I am not inclined to interfere with the impugned order in exercise of revisional jurisdiction of this Court.

Moreover, on a close scrutiny, in my opinion, impugned order has not occasioned failure of justice requiring interference under the revisional

jurisdiction.

13. Resultantly, the instant revision petition lacks in merit and the same is accordingly dismissed summarily.