

Desh Raj Singh Vs Smt. Vandana Chaudhary

Court: Allahabad High Court

Date of Decision: Jan. 10, 2006

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Order 21 Rule 2, 47

Criminal Procedure Code, 1973 (CrPC) â€” Section 125, 47

Hindu Marriage Act, 1955 â€” Section 13

Limitation Act, 1963 â€” Article 134

Citation: AIR 2006 All 154 : (2006) 3 AWC 2475 : (2006) 100 RD 486 : (2006) 1 RD 486

Hon'ble Judges: K.N. Ojha, J

Bench: Single Bench

Advocate: Anil Kumar sharma, for the Appellant; M.K. Gupta, for the Respondent

Final Decision: Dismissed

Judgement

K.N. Ojha, J.

Heard learned Counsel for the parties and have gone through the record.

2. Instant appeal has been preferred against order dated 16-12-05 passed by Addl. District judge, court No. 13, Agra whereby the application 4-

C and 12-C moved by appellant judgment debtor Desh Raj Singh under Order 21 Rule 55,58 and 59 CPC was rejected and objection 8-c filed

by decree holder smt. Vandana Chaudhary was allowed.

3. The fact of the case as disclosed from the record is that Srmt. Vandana Chaudhary filed suit No. 660 of 1991 Smy. Vandana Chaudhary V.

Desh Raj Singh u/s 13 of Hindu Marriage Act for divorce, It was decided on 31-08-01. The suit was decreed on the condition that in case Rs.

1.40.000/- is paid to the appellant by the respondent the marriage will stand dissolved. According to Desh Raj Singh Rs. 1.40.000/- which

includes Rs. 1 Lakh for permanent maintenance and Rs. 40.000/- as valuation of articles belonging to the respondent decree holder was given to

her on 9-11-01. Smt. Vandana Chaudhary executed the receipt on the same day. But again she moved application for execution. According to the

appellant this amount was withdrawn from his Account No. 2664, which was being maintained in Canara Bank but smt. Vandana Chaudhary

denied to have received any such amount and has moved for recovery of Rs. 1.40.000/- and therefore the application was moved to stay the

execution. Prayer was made to the court below to obtain signature of Smt. Vandana Chaudhary and send the signature alleged to have been

executed on the receipt and specimen signature to the hand writing expert so that it may be ascertained as to whether she had really received Rs,

1,40,000/- from the appellant on 9-11-01. Being rejected instant appeal has been filed. A copy of the receipt vide paper No. 32 and 32 A has

been filed and there are three witnesses of the receipt.

4. When the appeal was filed Sri Pankaj Agrawal Advocate opposed admission of the appeal and placed reliance on order 21 Rule 2 and 3 CPC.

It is submitted that if payment of decretal amount is made outside the court, there is a mandatory provision that it will be taken to be really paid if

the payment is certified by the decree holder to the court whose duty is to execute the decree and the court shall record the execution or

satisfaction of the decree. It is submitted that since in this case even though it is said payment of Rs. 1.40.000/- was made on 8.11.01 but never

any application was moved by judgment debtor that such heavy amount was paid outside the court. No such application was moved by judgment

debtor within 30 days and decree holder uptil now. rather decree holder denies receipt of such money and therefore execution of the decree

should not be stayed.

5. The objection alongwith affidavit was filed by decree holder smt. Vandana Chaudhary in court below containing the fact that decree dated 30-

8-01 was passed by the Principal Judge Family court, Agra in civil suit No. 608 of 1991 Smt. Vandana Chaudhary V. Desh Raj Singh. On the

basis of compromise the amount of Rupees 1,40,000/- was to be paid within one month. She waited upto 18th March, 2002 but not even a single

penny was paid to her. Therefore, she moved execution application No. 6/02 Smt. Vandana Chaudhary v. Desh raj Singh in the court of principal

judge, family court, Agra which was transferred to the District Judge, Agra, In the court of the District Judge, Agra it was marked Execution No. 4

of 2004. The execution court passed order for attachment of the property of the appellant. Smt. Vandana Chaudhary has no means of livelihood

she was left by Desh Raj singh and that is the reason she filed application u/s 125 Cr.Pc for maintenance. Desh Raj did not appear in the case. It

was decreed expert but only Rs. 14,000/- was given to her Rs. 18,000/- has not been given even till today. Desh Raj singh is an Advocate in civil

court, Agra and he got a forged receipt prepared. It was also deposed in the affidavit of Smt. Vandana Chaudhary that there is account of family

court, Agra in branch of State Bank Of India Nagar Mahapalika, Agra and in such compromise matter the money is to be deposited in the court

which should have been deposited in the State Bank of India, Nagar Mahapalika Agra branch Agra.

6. Desh Raj Singh is an Advocate he had no problem to issue cheque in the name of the court which would have been deposited in the State Bank

of India and there would have been documentary evidence that the money was given to Smt. Vandana Chaudhary through process of the court.

The learned Counsel for the respondent decree holder submitted that when he is an Advocate in civil court such heavy amount could not be given

outside the court merely on receipt when the parties are contesting the case between them since last 14 or 15 years and even the whole amount of

maintenance which was granted u/s 125 Cr. PC by the court, was not given by the judgment debtor. It is submitted for the respondent that when

the relations between the parties are so tense and they had no faith on each other, the judgment debtor is illiterate person having no knowledge

about the proceeding of the case. If really he had paid Rs. 1,40,000/- he would have deposited the amount through cheque in the court with the

prayer that it be given to the decree holder rather than cash would have been given through receipt. It is also submitted that mere issue of cheque

was sufficient rather than to encash it from Bank and then given it to Smt. Vandana Chaudhary.

7. In 1988 ALT 1200 Shariti Prasad Jain v. Badri Prasad Biraj Bhan it has been held by this Court that under order 21 rule 2 the judgment debtor

has been given an opportunity for making an application showing satisfaction. For making such an application there is limitation of 30 days under

article 134 of Indian Limitation act 1963. When no such application was made by the judgment-debtor for several years, it cannot be said that the

judgment debtor had really paid for the satisfaction of the decree. Besides it the application was barred by time and it could not be considered

under Order 21 Rule 2 CPC. The fact of the cited case applies to the fact of the instant case.

8. In Sultana Begum Vs. Prem Chand Jain, it was laid down by Hon"ble the Apex Court that:

Interpreting the provisions of Section 47 and Order XXI Rule 2 in the light of the above principles, there does not appear to be any antithesis

between the two provisions. Section 47 deals with the power of the court executing the decree while order XXI, Rule 2 deals with the procedure

which a Court whose duty it is to execute the decree, has to follow in a limited class of cases relating to the discharge or satisfaction of decree

either by payment of money (Payable under the decree) out of Court or adjustment in any other manner by consensual arrangement. The general

power of deciding questions relating to execution, discharge or satisfaction of decree u/s 47 can thus be exercised subject to the restriction placed

by Order XXI, Rule 2 including Sub-rule (3) which contain special provisions regulating payment of money due under a decree outside the Court

of in any other manner adjusting the decree. The general provision u/s 47 has, therefore, to yield to that extent to the special provision contained in

Order XXI, Rule 2 which have been enacted to prevent a judgment debtor from setting up false or cooked up pleas so as to prolong or delay the

execution proceedings. Thus, though it is open to the parties to adjust or compromise their rights under the decree but if it amounts to adjustment

of decree, it must be reported to the court whose duty it is to execute the decree so that court may record or certify the same. If it is not done, the

Court before whom the execution proceedings are initiated will proceed to execute the decree.

Where in an execution proceedings of a decree of eviction, the tenant took the objection on the ground that the possession was already delivered

by him to the power of attorney holder of the landlord who again permitted him to continue in possession as a licensee, however, such fact of

delivery of possession was not recorded and certified as provided by Order 21 Rule 2, order of the executing Court in refusing to execute the

decree for eviction of the tenant on the ground that possession having been delivered to the landlord's attorney, the decree, to that extent, stood

satisfied, was erroneous.

9. It was also held in this case that the Judgment debtor may set up a false case of compromise if it takes place outside the court or decree is

executed outside the court. It is in order to prevent such judgment-debtor that Order 21 Rule 2 has been enacted so that if such compromise or

creation of fresh tenancy has not been recorded, the judgment-debtor be not encouraged to initiate another round of litigation u/s 47 Cr. P.C.

10. In instant case Smt. Vandana Chaudhary is contesting case against her husband judgment debtor Desh Raj Singh since the year 1991 when

she filed case u/s 125 Cr. P.C it was decreed but only part payment was made and part amount is still to be paid. Thus the parties have no faith on

each other. Their relations are strained. Such a long litigation is evidence of the fact that if any payment is made outside the court, it may give birth

to further litigation. In such circumstance if any payment is made in normal course, it will be made through documentary evidence or through the

process of the court when Desh Raj Singh is an Advocate he has Account in the Bank as is evident from the record, normally he would have

issued cheque in favour of the court or Smt. Vandana Chaudhary so that it could have been given to Smt. Vandana Chaudhary. Therefore

considering the facts and circumstances of this case it cannot be believed that Rs. 1,40,000/- was paid outside the court and receipt was obtained.

The mandatory provision Order XXI Rule 2 CPC prohibits the judgment debtor to take the plea to payment if the judgment debtor fails to move

application in the court concerned that payment was made to the decree holder even though payment is said to have been made on 9.11.01 but no

application was moved by the judgment debtor in the court that he had paid Rupees 1,40,000/- and fact be recorded by the court when the

judgment debtor is an advocate at the same place there was no hurdle in moving such application to the court. It shows that such application was

not moved because really payment was not made that is why when execution application No. 6/ 02 was moved in the family court it was

transferred to the court of District Judge and process for attachment started. The objection was raised by moving application 4-c and 12-c. The

law has been laid down in the above cited Sultana Begum's case by Hon"ble Apex Court that Order XXI Rule 3 places a restraint on the exercise

of that power by providing that the executing court shall not recognize or look into any uncertified payment of money or any adjustment of decree.

If any such adjustment or payment is pleaded by the Judgment debtor before the executing court the later in view of the legislative mandate has to

ignore it If it has not been certified or recorded by the Court.

11. In view of above discussion if the court below has rejected the application of the appellant there is no Illegality in the order.

12. Appeal is dismissed at the admission stage.