
(1988) 08 AHC CK 0039

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 8285 of 1988

Hira Devi and Others

APPELLANT

Vs

Harinath Chaurasiya and Others

RESPONDENT

Date of Decision: Aug. 4, 1988

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 47
- Specific Relief Act, 1963 - Section 16

Citation: AIR 1989 All 11

Hon'ble Judges: B.L. Yadav, J

Bench: Single Bench

Advocate: R.P. Tripathi, for the Appellant; Standing Counsel, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

B.L. Yadav, J.

This petition under Article 226 of the Constitution of India is directed against the order dated 18th March, 1988 (Ann. 6), 14-4-88 (Ann. 8), 24-12-87 (Ann. 5) and 20-5-77 (Ann. 3), passed on the objections taken by the judgment-debtor, the petitioners, in execution proceedings in a suit filed by respondent No. 1 for specific performance of the contract which was decreed and the decree became final against the petitioners.

2. The aforesaid decree was put in execution by respondent No. 1. The petitioners, judgment-debtors filed objections u/s 47 of the Civil P.C. (for short the Code) stating that the suit was barred by Section 16(c) of the Specific Relief Act, 1963 (for short the Act), as the plaintiff-respondent No. 1 did not allege in his plaint that he was ready and willing to perform his part of contract. Hence the suit could not have been decreed and the decree itself was without jurisdiction and nullity, hence the

execution application could not be allowed.

3. Respondent No. 1, however, refuted the objections raised by the judgment-debtor and alleged that sufficient allegations required for a suit for specific performance of the contract, were made. Further those objections must have been in any case, raised at the initial stage before the issues were framed, and in case they were not raised, these objections of the judgment-debtor were not maintainable when the decree has been put in execution, as once the decree has been put in execution, only the objections pertaining to execution, discharge and satisfaction of the decree could be raised and those objections could not be raised which could have been raised at the initial stage before framing issues or in any case before the suit was decreed. It was further alleged that the execution Court cannot go behind the decree except in very exceptional circumstances where the decree itself was without jurisdiction. The learned Munsif, however, rejected the objections of the petitioners u/s 47 of the Civil P.C. The revision against that order also failed by order dated 18-3-88. It is against these orders the present petition has been filed.

4. Learned counsel for the petitioners urged that the suit was barred by Section 16(c) of the Act as the necessary averments were not made in the plaint, hence the Court has no jurisdiction to pass a decree or in any case such a decree was a nullity. The respondents are (sic) and for them it was urged that such objections cannot be raised in execution proceedings.

5. Having heard the learned counsel for the parties I am of the view that the submissions made by the learned counsel for the petitioners are devoid of merits. Once the suit has been decreed and the said decree having become final and is put in execution, it is only within the purview of Section 47 of the Act that the objections could be raised. Part III of the Civil P.C., 1908 (for short the Code), particularly Sections 36 to 47 deal with the execution of decree. Even subsequent sections till Section 74 enact several provisions for different stages in the execution proceedings. But Section 47(1) is very material, and relevant part of the same is set out below :

"47. Questions to be determined by the Court executing the decree: 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."

6. The scope of objection by the judgment-debtor is pertaining to execution, discharge or satisfaction of the decree and not to go behind the decree to question its validity on the grounds which were open to judgment-debtor at the appropriate stage before the decree was passed. The word "execution" is not a defined term under the Code. According to Collins Concise English Dictionary the word "execution" connotes "to carry out, to complete, to perform, to accomplish, to carry

into effect" etc. According to Webster's III International Dictionary, the word "execution" means "to act or process of executing, performance, accomplishment, process for carrying into effect the judgment or decree of a Court." The word "discharge" also connotes "fulfilment, accomplishment, the act of getting rid of an obligation or liability, the act of being relieved." What Section 47 contemplates is that the execution Court must take the decree as it is, according to its tenor and must not entertain any objection that the decree was incorrect in law or on facts till the decree is set aside in an appropriate proceeding in an appeal or revision. Even if it is erroneous, it is binding on the parties. An erroneous decree is as much binding on the parties as a legal decree. It need not be over emphasised, except in few cases where the decree is a nullity, as without bringing the legal representative of a person who was dead on the date of decree, or in a case where the decree is passed by a Court having no jurisdiction to make it, other objections cannot be raised. The jurisdiction has assumed such a connotation that irregularity or illegality in the procedure or in the pleading is not covered by the expression "jurisdiction". It is better to make a reference to expression "jurisdiction" as stated in Halsburys Laws of England, 4th Edition, Vol. X para 715 as follows :

"By jurisdiction is meant authority by which a Court has to decide matters that are litigated before it, or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by Statute or Charter or Commission under which the Court is constituted and may be extended or restricted by similar means. If no restriction or limitation is imposed, the jurisdiction is said to be unlimited. A limitation may be either as to the kind or nature of the actions or the matters of which a particular Court has cognizance or as to the area over which the jurisdiction extends, or it may partake of both these characteristics."

7. In American Jurisprudence, II Edition. Vol. 32-A para 1228, page 482 it has been stated that essentially the jurisdiction is an authority to decide the given case one way or the other. Similarly under para 897 it has been stated that even though any party has raised objection about the jurisdiction of the Court, the Court itself has power to determine its own jurisdiction. In case a Court has no jurisdiction, it cannot obtain it by consent or waiver.

8. In view of the aforesaid statement of law about the authority of the Court to decide a matter, the lack of jurisdiction in the Court was not pointed out either by the judgment-debtor or by anybody else till the decree became final and was put in execution. Now at that stage, when the decree is put in execution, it cannot be assumed that the Court has inherent lack of jurisdiction. In the present case the suit for specific performance of the contract was maintainable in the Civil Court. The plaint was filed by respondent No. 1 and the written statement was filed by the petitioners, who did not raise any objection about the lack of jurisdiction, nor the plea of the suit being barred by Section 16-C of the Act was taken and the decree became final in all respects. When the decree has been put in execution it is not

open to the petitioners to raise such objections, nor the same can be permitted to be raised by the execution Court. This was not an objection pertaining to the execution, discharge or satisfaction of the decree. Execution means carrying into operation the effect of the decree. Now the decree was sought to be given effect to. If somebody objects or resists the right of the decree-holder on the ground that somebody else other than the judgment-debtor is in possession that objection can certainly be raised, and for that apart from other provisions, Section 74 and other relevant provisions under Order 21 were there. Since the plea about the suit being barred by Section 16(c) of the Act was not taken at the appropriate stage, hence it would not be open to the judgment-debtors to take that plea at the stage of execution of the decree. These objections, must have been taken at the stage of trial. In other words, the executing Court would have no power within the meaning of Section 47, to entertain such objections. At that stage the objections regarding illegality or irregularity in passing the decree or rendering the judgment were not within the authority of the execution Court.

9. In the present case the question about the validity or irregularity in passing the decree could not be raised nor permitted to be raised in the execution proceedings so as to lead to the conclusion even though ill-founded that the Court which passed the decree had no jurisdiction to pass it. In very exceptional cases, however, the objections about the purporting jurisdiction or objection u/s 11 of the Suits Valuation Act could be looked into. Other objections cannot certainly be raised. It is better to quote an observation of the Supreme Court in [Vasudev Dhanjibhai Modi Vs. Rajabhai Abdul Rehman and Others](#), :-

"For the purposes of determining whether the Court which passed the decree, had jurisdiction to try the suit, it is not necessary to determine the facts on the decision of which the question depends and the objection does not appear on the face of record, the executing Court cannot enter upon in any way into those facts."

10. It is, thus obvious that when such objections have been raised that the Court that has passed the decree, has no jurisdiction, the execution Court must not determine the facts on the decision of which the question depends. Even when such objections appear on the face of record itself, or in other words, where objection appears to be crystal clear, the execution Court would not be justified in entering into the enquiry about those facts or objections. In the present case I am of the view that the Courts below have correctly taken the view that the plea of judgment-debtor, the petitioners, that the suit was barred by Section 16(c) of the Act, consequently, the same could not have been decreed, was correctly rejected and the execution has been correctly ordered to proceed.

11. The writ petition is devoid of merits and the same is accordingly dismissed