

(2013) 08 AHC CK 0195

Allahabad High Court

Case No: Civil Revision No. 341 of 1997

M/s. Gangotri Sahkari
Avas Samiti Ltd.

APPELLANT

Vs

M/s. Pushpa Sahkari
Avas Samiti Ltd. and
Others

RESPONDENT

Date of Decision: Aug. 12, 2013

Citation: (2013) 8 ADJ 36 : (2013) 100 ALR 546 : (2013) 121 RD 200

Hon'ble Judges: S.U. Khan, J

Bench: Single Bench

Advocate: A.K. Goyal and Ravi Kant, for the Appellant; A.K. Gupta and Pankaj Bhatia, for the Respondent

Judgement

S.U. Khan, J.

This revision was initially allowed on 10.1.2002, however the said judgment was set aside by the Supreme Court on 30.3.2012 and matter was remanded. The Supreme Court judgment in [Pushpa Sahakari Avas Samiti Ltd. Vs. Gangotri Sahakari Avas S. Ltd. and Others](#), . The Supreme Court had directed the Chief Justice to nominate a Judge to hear and dispose of the Civil Revision within six months. There after it was nominated to me. It could not be decided within the time frame fixed by the Supreme Court due to the reason that I made efforts on several dates to persuade the parties to settle the dispute amicably and in this regard different orders were passed on the order sheet. As late as 10.1.2013 following order was passed on the order sheet:

10.1.2013

Learned counsel for both the parties state that now there is ample concrete possibility of compromise and pray for three weeks adjournment.

List on 5.2.2013.

On 23.5.2013 when judgment was reserved following order was passed:

Heard learned counsel for both the parties.

Judgment reserved.

Before arguments could start, learned counsel for applicant filed a supplementary-affidavit giving a particular type of offer. Learned counsel for respondent stated that extensive efforts made by the Court for settlement of the dispute amicably had already failed and the opposite party was not at all interested in the offer made by the applicant through supplementary-affidavit.

2. Since 1.7.2013 till the last working day, I was sitting at Lucknow. Accordingly, today the judgment is being delivered.

3. Heard learned counsel for both the parties.

4. This revision arises out of a suit [O.S. No. 502 of 1995] filed by the opposite party M/s. Pushpa Sahkari Awas Samiti Ltd. against applicant M/s. Gangotri Sahakari Awas Samiti Ltd. Suit was decreed on the basis of compromise on 6.9.1996. One of the conditions of the compromise was as follows:

(i) That the defendant No. 1 acknowledges and undertakes to pay Rs. 38,38,000/- to the plaintiff within six months from the date of this compromise. The payment of the said amount by the defendant No. 1 to the plaintiff shall have the effect of settling entire claim of the plaintiff as against the defendant No. 1 in full and final.

5. On 17.2.1997 plaintiff filed application for execution which was registered as Misc. Case No. 9 of 1997. Objections u/s 47, C.P.C. were filed by the defendant J.D. which was registered as Misc. Case No. 43 of 1997. One of the objections was that execution application was premature as on 17.2.1997 when execution application was filed, six months from the date of decree (6.9.1996) had not expired. The executing Court/Civil Judge, Allahabad through order dated 21.7.1997 rejected the objections regarding the application being premature as by that time period of six months had expired. The executing Court further directed that the entire amount under the decree had become payable hence the same shall be paid. Against the said order, this revision has been filed. On 10.1.2002, this revision was allowed holding that the application when filed was premature. The said order has been set aside by the Supreme Court holding that as the application had become mature during its pendency hence it should have been considered on merit.

6. The precise grievance of the decree-holder plaintiff was that instead of Rs. 38,38,000/-, defendant No. 1, J.D. had paid only an amount of Rs. 17 lacs.

7. The defendant J.D. contended before the executing Court that it was ready to pay the balance amount provided that decree-holder signed the sale-deeds of the land in dispute, which was to be executed by the defendant J.D. however as decree-holder had refused to sign the sale-deeds, hence defendant was unable to arrange for the money, which was to be arranged by it by selling the land which had been given to it under the compromise. The decree-holder stated that it had not refused to sign the sale-deeds and no amount over and above Rs. 17 lacs was offered to be paid by the defendant.

8. J.D. had also contended that an amount of Rs. 10 lacs had deliberately been refused by the plaintiff applicant. The trial Court held that if this allegation was correct, the amount could be deposited by the J.D. in Court. Ultimately, the executing Court passed an order to the effect that execution proceedings were postponed upto 28.8.1997 by which date the entire unpaid amount should be paid to the decree-holder.

9. Copy of the compromise is Annexure-2 to the affidavit filed in support of the stay application. Condition No. 2 in the compromise was that the defendant No. 1 would neither agree to sell nor actually sell any part of the disputed property admeasuring 2224 square yards of Bungalow No. 24, Lowther Road, George Town, Allahabad without payment of Rs. 38,38,000/- and if it does so the transaction should be wholly void.

10. One of the allegations made by the plaintiff decree-holder in the execution application was that some transfers had been affected by the defendant No. 1. Condition No. 4 was as follows:

That in case the defendant No. 1 fails to pay the aforesaid amount within the said period then the plaintiff shall have absolute right to deal with the land shown with red line in the attached plan with compromise measuring 2224 square yards and the defendant No. 1 shall cease to have any right, title or interest of the aforesaid land.

11. Two things are quite clear. One is that defendant No. 1 has not paid balance amount of Rs. 25,38,000/-. Second is that plaintiff admittedly received Rs. 17 lacs, however while filing execution application neither it returned the said amount of Rs. 17 lacs to the defendant No. 1 nor deposited the same in the Court.

12. Accordingly, in my opinion, under the facts and circumstances of the case and keeping in view the legalities as well as equities plaintiff is not entitled to the land in dispute. However, defendant is liable to pay good compensation to the plaintiff for not paying balance amount of Rs. 25,38,000/- either within six months or till today, which I quantify at 50% per year of the same keeping in view the astronomical rise in prices of land particularly during last five to ten years. From March, 1997, the period comes to slightly more than 16 years which is rounded off to 16 years. At this juncture order dated 1.11.2012, on the order sheet is quoted below:

List on 20.11.2012.

In terms of Section 89 C.P.C. the Court suggests that parties may try to settle the dispute amicably. One of the possible modes of settlement may be that applicant pays Rs. 2/- crores to the respondent No. 1 and thereupon respondent No. 1 gives up all its rights over the entire property in dispute.

13. However, parties could not agree to the said suggestion.

14. Accordingly, on the above formula, the total payable amount comes to Rs. 2,28,42,000/- (Rs. 25.38 lacs + Rs. 203.04 lacs). The said amount shall be deposited by the applicant in the bank account of plaintiff respondent No. 1 by 12.11.2013 if details of the Bank Account are supplied within a week by learned counsel for respondent to the learned counsel for applicant within a week otherwise it shall be deposited before the executing Court for immediate payment to respondent No. 1. In case of failure of applicant to deposit the aforesaid amount by 12.11.2013 plaintiff opposite party No. 1 shall deposit the amount of Rs. 17 lacs alongwith 10% per year interest before the executing Court in between 13.11.2013 to 12.12.2013 and thereupon in terms of clauses 4 and 6 of the agreement, property in dispute shall belong to the plaintiff No. 1 and its possession shall be delivered to it. However if none of these things happen then plaintiff opposite party No. 1 shall be entitled to recover the aforesaid amount of Rs. 2,28,42,000/- with 15% per year interest w.e.f. 6.3.1997. Civil Revision is disposed of.