

Bahadur Singh Gupta Vs Mohammad Ali

Court: Madhya Pradesh High Court

Date of Decision: April 20, 1977

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 41, 47

Citation: (1977) JLJ 609

Hon'ble Judges: J.S. Verma, J; C.P. Sen, J

Bench: Division Bench

Advocate: R.K. Pandey, for the Appellant; Fakruddin, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

C.P. Sen, J.

This letters patent appeal has been filed by the judgment-debtor on a leave being granted, by a Single Bench on this Court

and it arises out of execution proceedings.

2. The appellant got a decree for ejectment and damages at the rate of Rs.20/- per month against the respondent in civil suit no. 122-A of 1952 on

17-2-1954. The decree was confirmed by this Court in second appeal no, 906 of 1955 on 31-10-1953. The appellant then sought to execute the

decree by presenting an application for execution on 29-7-1959. The respondent took certain objection to the execution of the decree but on 22-

9-1961 the appellant in the absence of the respondent informed the Court that he does not want to prosecute the execution application which was

accordingly dismissed, Thereafter, a second application for execution of the decree was presented on 11-8-1965 seeking ejectment of the

respondent from the suit land. The respondent filed an objection on 22-6-1966 purporting to be one u/s 47 of the CPC contending amongst other,

that there has been a settlement between the parties under which the appellant has given up his right of ejectment and has made the respondent his

tenant on a fresh contract of tenancy on an enhanced monthly rent of Rs. 71/- from 9-2-1961 and the respondent has paid Rs. 1001/- towards the

compromise on the same day to the appellant. It was, therefore, prayed that the execution application be dismissed. The learned executing Judge

took the view that the objection taken by the respondent amounts to an adjustment of decree but since it was not certified within time it was barred

under Order 21 Rule 2 of the Code. The order was maintained in appeal by the learned Additional District Judge. In Second appeal the learned

Single Judge of this Court disagreed with the views taken by the Courts below and held that since a fresh contract of tenancy has been created

there has been no adjustment of the decree and since there was no delivery of possession to the appellant by the respondent there could not be

any adjustment of decree but the agreement between the parties has rendered the decree unenforceable which can be enquired into u/s 47 of the

Code and Order 21 Rule 2 has no application. He therefore, remitted the case to the executing Court for investigating the agreement alleged by the

respondent on merits. Accordingly, the appeal was allowed and the orders of the Courts below were set aside. However, leave was granted and

hence this letters patent appeal has been filed.

3. The only question for consideration is whether the facts as alleged by the respondent amount to an adjustment of the decree and the adjustment

having not been certified or recorded within limitation, it cannot be recognised in view of Sub-rule (3) of Rule 2 of Order 21 of the Code.

4. Rule 2 of Order XXI of the Code reads as under:--

R. 2 (1) Where any money payable under a decree of any kind is paid out of Court, or the decree is otherwise adjusted in whole or in part to the

satisfaction of the decree holder, the decree holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree,

and the Court shall record the same accordingly.

(2) The judgment debtor also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder

to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified and, if after service of such

notice, the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same

accordingly.

(3) A payment or adjustment, which has not been certified or recorded as aforesaid, shall not be recognized by any Court executing the decree.

In view of the words ""under a decree of any kind"" in sub-rule (1) the High Courts of Allahabad, Bombay, Calcutta, Lahore, Mysore, Nagpur and

Patna have held that this Rule applies to every kind of decree, Sri Ram Vs. Lekhraj, Ellis v. Kitter AIR 1922 Bom. 380 , Shaikh Niamat Vs.

Shaikh Jalil, AIR 1936 842 (Lahore) Muddgowda v. Gannamma AIR 1963 Mys 79, AIR 1948 374 (Nagpur) and Harihar Prasad Narain Singh

Vs. Gopal Saran Narain Singh and others whereas the High Courts of Andhra Pradesh, Madras and Orissa have held that this Rule applies to

cases where money is payable under a decree, whether there are other reliefs or not. Apart from the fact that the Nagpur view is in accord with the

majority view, we are also bound by the view taken in the Nagpur case. The main object of this rule seems to be that the parties must bring to the

notice of the Court any adjustment of the decree made outside the Court. Clearly, adjustment is a transaction which extinguishes a decree in whole

or in part and cannot mean an adjustment to give effect to the terms of which would be to create a new decree at variance with the decree under

execution and which will again have to be executed. A Division Bench of the Nagpur High Court in AIR 1948 35 (Nagpur) , while considering the

provisions of Order 12 Rule 2 has held as under:--

Agreements to compromise a claim to execute a decree may be divided into three classes. In the first class, the decree-holder agrees to give up all

his rights under the decree on the judgment-debtor's doing something or other and there is no adjustment until the judgment-debtor has done

whatever he promised. The second class of agreement is where the decree-holder agrees to give up all his rights under the decree in return for a

promise by the judgment-debtor to do something or other; on the recording of such an adjustment, the decree becomes fully satisfied and the

decree-holder can enforce the fulfilment of the judgment-debtor's promise only by a separate suit. It is now well settled that such an agreement

amounts to an adjustment of the decree. The third class of agreement is one in which the parties agree that the decree shall be modified in some

way or the other and that the decree-holder shall be entitled to execute the decree as modified but not the original decree. The question of the class

in which the compromise falls is a question of fact.

5. The learned Single Judge took the view that the compromise alleged by the respondent is enforceable under S. 47 and does not fall within the

purview of Rule 2 of Order 21 of the Code since there is no adjustment of the decree but because of the compromise the decree has become

unenforceable. The learned Single Judge has referred to the decision of the Supreme Court in M.P. Shreevastava Vs. Mrs. Veena, where it has

been held that there is no antithesis between section 47 and Order 21, Rule 2; the former deals with the power of the Court and the latter with the

procedure to be followed in respect of a limited class of cases relating to discharge or satisfaction of decrees. He has also referred to the Division

Bench decision of this Court in Nirmalchand v. Parmeshwari Devi 1958 J.L.J. 427, wherein it has been held that the Code puts no restriction on the

parties liberty of contract with reference to their rights and obligations under the decree and, therefore, even if an agreement may not involve an

adjustment of the decree but if it effects the question of execution, discharge or satisfaction thereof, it will be required to be investigated and

adjudged in proceedings u/s 47 of the Code". There can be no quarrel with the propositions laid down in these two rulings but they have no direct

application to the question involved in the present case. The learned Judge also referred to a Single Bench decision of the Allahabad High Court in

Bhagwati Mahraj v. Shambhu Nath AIR 160 All. 562 that if the compromise does not result in satisfaction or extinguishment of the decree, it can

be enforceable u/s 41 of the Code. The facts of that case are clearly distinguishable. There, the decree-holder had agreed not to execute the

decree as the judgment-debtor agreed not to file an appeal, which was held to be an arrangement not resulting in extinguishment of the decree.

6. However, it was not brought to the notice of the learned Single Judge the view of the Nagpur High Court in AIR 1943 339 (Nagpur) and AIR

1948 374 (Nagpur) that the adjustment of decree for possession falls within the ambit of Order 21 Rule 2 of the Code and if the adjustment has

not been certified, the executing Court cannot take cognizance of it. As such, there is no discussion of these two rulings in the order of the learned

Single Judge The latter case of *Devidas v. Balasaheb Sansthan*. *Basim* (Supra) is directly applicable to the facts of the present case wherein in

execution of the decree for ejectment the judgment debtors contended that there was a subsequent agreement by which they were allowed to

continue in possession and, therefore, the decree could not be executed. The executing Court held that the agreement amounted to adjustment and

could not be pleaded in execution as it was not certified under Order 21 Rule 2. This view of the executing Court was upheld by Pollok, J. while

relying on his earlier decision in *Mantrilal v. Madurnath* (Supra). There is no reason why we should not follow the view taken by the Nagpur High

Court and which has stood the test of time all these years. The Supreme Court in *Gajnan and Others Vs. Seth Brindaban*, has enunciated the

principle of stare decisis as under: --

Where the meaning of a statute is ambiguous and capable of more than one interpretation and one view accepted by the highest court has stood for

a long period during which many transactions, such as dealings in property and making of contracts, have taken place on the faith of that

interpretation the Court would normally be reluctant to put upon it a different interpretation which would affect these transactions. To justify the

reversal of a decision of the highest court which has prevailed for a considerable length of time there should be some exceptional reason why such

a reversal is likely to create serious embarrassment to those who had acted on the faith of what seemed to be the settled law.

7. This apart, the view taken in the Nagpur cases has been followed by Singh, J. in *Prataprai v. Hemandas & ors.* 1975 JLJ SN 51, In that case,

Singh J. has distinguished the decision of the Allahabad High Court in *Chitra Talkies Vs. Durga Dass Mehta*, wherein the learned Single Judge of

the Allahabad High Court had observed in a similar situation that unless there is an actual vacating of possession by the judgment debtor there

cannot be an adjustment of the decree. It has rightly been pointed out that an adjustment is an agreement which extinguishes the decree in whole or

in part and results in satisfaction of the decree & when by an agreement the parties entered into a fresh contract of tenancy and thereby create a

right in the tenant to continue possession, a decree for ejectment passed against the tenant gets extinguished and, therefore, such an agreement

amounts to an adjustment of the decree. We are, therefore, unable to agree with the view expressed by Raina, J. in his impugned order. As such,

the decision of the Single Bench of this Court in *Mohd. Ali Vs. Bhadur Singh*, is hereby overruled.

8. The appeal is, therefore, allowed with costs, the order of the learned Single Judge in Misc. Second Appeal No. 302/1973 is set aside and the

orders of the Courts below are affirmed. The respondent's application u/s 47 for recording of the compromise is rejected, Counsel's fee Rs.

100/-, if certified.