Mohd. Ali Vs Bhadur Singh

Court: Madhya Pradesh High Court

Date of Decision: Oct. 1, 1975

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

Citation: (1977) ILR (MP) 683 : (1977) JLJ 29

Hon'ble Judges: S.M.N. Raina, J

Bench: Single Bench

Advocate: P.S. Das, for the Appellant; R.K. Pandey, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

S.M.N. Raina, J.
This is a second appeal arising out of an execution case.

2. The respondent obtained a decree for ejectment of the appellant from a plot occupied by him as a tenant in Civil Suit No. 122A of 1952.

Thereafter he started execution proceedings against the appellant. The case of the appellant is that on 9-2-1961 the parties came to terms and a

fresh tenancy was created at the rate of Rs. 71 per month in his favour by the respondent; and thereafter the respondent got the execution case

dismissed on 22-9-1961. The respondent recovered rent at the rate of Rs. 71 per month from the appellant after 9-2-1961 till 1963 and passed

receipts for the same. According to the appellant, he spent a huge amount for the construction of pucca structures for running rice and poha mills

after the new tenancy was created on 9-2-1961. In 1965 the respondent again filed an execution application for ejectment of the appellant. The

appellant filed an objection contending that he could not be ejected in the circumstances of the case. The executing Court, however, dismissed the

objection on 19-9-1973 on the ground that the alleged compromise or settlement was not certified in accordance with the provisions of rule 2 of

Order 21 of the CPC and therefore, it could not be given effect to in execution proceedings. The appellant thereupon filed an appeal which was

dismissed by the First Additional District Judge, Durg. Being aggrieved thereby, he has filed this second appeal.

3. The facts stated by the appellant have not been investigated so far by the Courts below because the objection was held to be untenable in view

of the provisions of rule 2 of Order XXI of the Code. I have, therefore, to consider whether the objection filed by the appellant is tenable,

assuming the facts stated by him to be true.

4. Rule 2 of Order XXI 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.

5. The basic point for consideration in this case is whether the facts stated by the appellant amount to an adjustment of the decree and the

adjustment, having not been certified or recorded within limitation, cannot be recognized in view of sub-rule (3) of rule 2 of Order XXI. Before I

proceed to deal with this question, I may observe that the provisions of sub-rule (3) of rule 2 are extremely harsh and must, therefore, be

restrictively construed. Sub-rule (1) of rule 2 makes it obligatory for the decree-holder to certify an adjustment to the Court; but his wilful omission

to discharge this duty puts him at an advantage vis-a-vis the judgment debtor, inasmuch as he is still competent to execute the decree against the

judgment-debtor who has failed to get the adjustment recorded by the executing Court within time as required by sub-rule (2). Since it is clear

from sub-rule (1) of rule 2 that the Legislature enjoins on the decree-holder the duty to certify an adjustment to the Court, it is difficult to

understand why the decree-holder is not penalised for his failure to discharge this duty and, on the contrary, he is placed in a position of advantage,

as pointed out above. However, statutory provisions have to be construed as they stand, regardless of the consideration whether they operate

harshly on one party or the other. It would be here pertinent to mention that in some of the States sub-rule (3) of rule 2 of Order XXI has been

omitted to avoid unnecessary hardship to the judgment-debtor.

6. In S.S. Nirmalchand and Another Vs. Smt. Parmeshwari Devi and Others, it was held by a Division Bench of this Court that rule 2 of Order

XXI only applies to adjustment of a decree and not to any other contract which affects its terms vide paragraph 16. There is a subtle distinction

between an adjustment of a decree, which wholly or partly satisfies the decree, and an agreement between the judgment-debtor and the decree-

holder subsequent to the decree which may result in merely rendering the decree unenforceable on account of a new relationship between the

parties. Adjustment of a decree means satisfaction of the decree in whole or in part, or modification of the decree. But, where the agreement does

not relate to the decree but is an independent agreement between the parties subsequent to the decree, it cannot be treated as an adjustment of the

decree even though it may make the decree unenforceable.

7. I may here refer to the decision of the Supreme Court in M.P. Shreevastava Vs. Mrs. Veena, . In the said case their Lordships made the

following pertinent observations in paragraph 13 :

There is, in our judgment, 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.

Their Lordships in the course of the judgment observed that rule 2 of Order XXI prescribes a special procedure for recording adjustments of a

decree or for recording payment of money paid out of Court under any decree. However, the plenary power conferred by section 47 of the CPC

upon the Court executing the decree is not thereby affected.

8. In Nirmalchand v. Parmeshwari Devi (supra) this Court pointed out 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

affects 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.

9. In the instant case, the case of the appellant judgment-debtor is that after the decree for ejectment the decree-holder let out the premises to him

on 9-2-1961 at the rate of Rs. 71 per month and recovered rent from him at that rate till 1963. Such an agreement does not amount to adjustment

of the decree because it was open to the decree-holder to let out the accommodation afresh even after executing the decree under an independent

contract. Thus, from the case as pleaded by the judgment-debtor it would appear that it is not a case of adjustment of the decree but of a new

contract between the parties subsequent to the decree on account of which the decree-holder could not execute the decree against the appellant.

Such a question can be investigated u/s 47 of the Code. Rule 3 of Order XXI is no impediment in such a case.

10. In Bhagwati Mahraj Vs. Shambhu Nath, it was held that a promise by the decree-holder not to execute an appellate decree if the judgment-

debtor agrees not to file an appeal against it is a compromise of a dispute and not an arrangement resulting in the satisfaction or the extinguishment

of the decree. Such a compromise is enforceable u/s 47 and does not fall within the purview of rule 2 of Order 21 of the Code of Civil Procedure.

This decision also supports the view that where an agreement merely renders the decree unenforceable without affecting its terms, the matter does

not fall within the purview of rule 2 of Order XXI of the Code as there is no adjustment of the decree, and it is open to the Court u/s 47 to

investigate the plea of the judgment-debtor relating to the agreement.

11. I, therefore, hold that the Courts below were in error in holding that the agreement set up by the appellant amounted to an adjustment of the

decree and could not be investigated as it had not been certified recorded within time as required by sub-rule (3) of rule 2 of Order XXI.

12. The appeal is accordingly allowed and the orders of the Courts below are hereby set aside. The case shall now go back to the Court for

investigating the agreement alleged by the appellant on merits after giving both the parties an opportunity to adduce such evidence as they desire in

respect thereof. As the matter was not free from difficulty, I hereby direct that the parties shall bear their own costs throughout.