(2002) 06 BOM CK 0019

Bombay High Court (Nagpur Bench)

Case No: First Appeal No. 607 of 1996

Sukhbir Kaur Pritamsingh Sandhu		APPELLANT
	Vs	
Nagpur Improvement Trust		RESPONDENT

Date of Decision: June 5, 2002

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 101

Citation: (2002) 5 BomCR 466

Hon'ble Judges: D.Y. Chandrachud, J

Bench: Single Bench

Advocate: S.S. Joshi, for the Appellant; S.K. Mishra, for the Respondent

Final Decision: Dismissed

Judgement

D.Y. Chandrachud, J.
In this first appeal, the appellant, who is the original plaintiff, seeks to challenge the judgment and order dated 8-8-1996 of the learned 5th Joint Civil Judge, Sr. Dn., Nagpur, in Special Civil Suit No. 133 of 1989.

2. The suit which has been instituted by the appellant against the Nagpur Improvement Trust, which is the original defendant, is for the recovery of an amount of Rs. 06,19,312.50 towards the market value of the goods and by way of damages "on account of illegal and high handed seizure of machinery and shed fitted with 300 G.C. sheets and allowing to rot in the open and also subject to theft of parts of machinery". (Para Clause 3-A). The appellant had instituted an earlier suit being Special Civil Suit No. 165 of 1980 in the Court of the learned Joint Civil Judge, Sr. Dn., Nagpur, for the return of goods worth Rs. 1,30,159.50 or for the recovery of the aforesaid amount as reflecting the price of the goods and for damages. It appears that a plot of land, bearing plot No. 2, situated at Ghat Road was allotted to one Pritamsingh on 3-2-1960 on the basis of a temporary licence. The licence came

to be cancelled on 16-5-1973 for non payment of the prescribed licence fee and the allottee was called upon to remove himself from the plot. That notice came to be issued by the Nagpur Improvement Trust on 24-10-1973 and ultimately, it would appear, the structure was removed on 18-7-1975. In the earlier suit which was instituted by the appellant, as already noted, there was a claim for the return of the goods which had been seized or for the price of the goods seized and for damages. The earlier suit was tried and the learned Joint Civil Judge, Sr. Dn., rendered judgment on 20-9-1982. The appellant had, in the course of the evidence in the earlier suit, produced a list of machinery and goods which, according to her, had been seized during the course of demolition by the respondent herein and it was the case of the appellant that the market value of the goods seized was Rs. 1,35,212/-. This was disputed by the respondent. The respondent furnished a list of the items which had been seized and which had been stored by it. The case of the respondent was that several notices were issued to the appellant to take back the custody of the articles which had been seized but the appellant was not willing to do so. Insofar as this proceeding is concerned, it would be material to note that Issue Nos. 3(a) and 3(b) of the issues which were framed in the earlier suit were thus :

3(a) Does the plaintiff prove that the machinery and goods as per list were on the plot and the defendant No. 1 took possession of the same?

3(b) Whether the market value of the said goods was Rs. 1,35,212?

Both the aforesaid issues were answered in the negative. The learned trial Judge, in the course of the judgment in the earlier suit, declined to accept the list of material seized, as submitted by the appellant. On the other hand, the list of goods prepared by the office of the respondent herein, which was marked as Ex. 56 in those proceedings, was regarded by the learned trial Judge as the correct list of the articles seized. The learned trial Judge noted that from the oral evidence it was evident that the respondent was ready and willing to return the goods but the appellant herein was reluctant to take delivery. The case of the appellant was that the goods had been found in damaged condition and, therefore, no delivery was taken. This plea was not accepted. The learned trial Judge accepted the contention of the respondent that the evidence led on behalf of the respondent showed that the goods were old and held that this evidence was satisfactory and believable. The learned trial Judge, therefore, accept the case of the respondent that the goods which were taken away by the respondent could not have been of a value more than Rs. 15,000/-. In paragraph 17 of the judgment, it is stated that it was the plaintiff who was trying to take advantage of the situation and was seeking to earn huge profit out of the old machinery. The learned trial Judge held that the appellant had failed to prove that the machinery and goods, in accordance with the schedule prepared by the appellant, had been taken away by the respondent and that the market value of the said goods was Rs. 1,35,212/-. The suit, it was common ground, was initially dismissed. But thereafter on an application moved u/s 52, the decree

was eventually amended so as to provide that the respondent shall deliver the goods which were seized from the husband of the appellant within a period of two months.

3. The learned Counsel appearing for the appellant has stated that the judgment of the learned trial Judge in the earlier suit was confirmed in appeal by this Court and by the Supreme Court. Thereafter, the appellant set in motion proceedings for the execution of the decree insofar as it provided for the return of the goods which had been seized. In the course of the execution proceedings the Executing Court appointed a Court Commissioner and eventually passed an order on 23-8-1988. The Executing Court noted that the respondent had filed an undertaking and shown its readiness to return the articles which had been seized, as reflected in the seizure list produced before the Court, but the appellant had refused to accept those goods. Thereupon, the respondent had filed a pursis intimating the Court that the appellant was refusing to accept the goods. The appellant, the Executing Court noted, was refusing to accept the goods on the ground that those were not the same as the goods which were seized from him or owned by him. The Executing Court appointed a Commissioner. The Court was of the view that once the appellant had refused to accept the goods, the execution proceeding was complete unless the appellant proves the value or identity of the property by filing a separate suit. Having said this, the Executing Court in its order dated 23-8-1988, while dismissing the execution, granted liberty to the appellant to file a separate suit claiming specific items seized from him or the market value of those items.

4. That led to the filing of the subsequent suit by the appellant. Insofar as the subsequent suit which was instituted by the appellant is concerned, that suit being Regular Civil Suit No. 133 of 1989, was instituted before the learned 5th Joint Civil Judge, Sr. Dn., Nagpur, on 26-9-1988. It would be material to record that in paragraph 3 of the plaint it has been sought to be averred that the machinery which has been seized by the respondent on 25-7-1975 was "newly purchased" and in a "proper marketing condition". On the other hand, what is sought to be returned is "old machinery". This, it would be apparent, is directly in the teeth of the finding which was recorded by the trial Court in the earlier suit. The trial Court had expressly found that the machinery which had been seized from the appellant was old and useless and it was the appellant who was attempting to make a profit out of the seizure. The appellant, on the circumstances, claimed damages to the tune of Rs. 6,19,312.50 in lieu of the machines and tin sheets alleged to have been illegally seized by the respondent.

5. The learned trial Judge has dismissed the claim in the suit by the impugned judgment and order dated 8-8-1996. The learned trial Judge has held that a perusal of the judgment in the earlier suit (which was produced and marked at Ex. 101) would show that the claim which was now sought to be urged was directly in the teeth of the findings recorded on Issues Nos. 3(a), 3(b) and 4 in the earlier suit. The

Court, in the earlier suit, had only ordered the respondent to deliver the goods back to the appellant and the respondent was not directed to pay the market value of the goods. Appellant''s witness Pritamsingh admitted that the list of the articles, which he was relying upon, was the same list which he had furnished in the earlier suit. The learned trial Judge has noted that when the judgment of the trial Court in the earlier suit was confirmed right up to the Supreme Court, it was not open to the Executing Court, in the earlier suit, to grant liberty to the appellant to institute a fresh suit for the recovery of the articles or for the market value of the articles which had been seized. The learned trial Judge noted that despite repeated letters written by the respondent (Exs. 151 to 154) to the appellant, the appellant and her husband had declined to take the goods which had been seized. In sum and substance, therefore, the learned trial Judge held that the claim was unsustainable. The learned trial Judge also held that the suit was not maintainable for want of statutory notice.

6. The findings which have been recorded by the learned trial Judge have been assailed in the First Appeal. I have perused the record and proceedings. The learned Counsel for the appellant has submitted that the decree which was passed in the earlier suit and which has been confirmed right up to the Supreme Court, would not preclude the appellant from instituting fresh proceedings for recovery and damages. The learned Counsel submitted that the goods which were sought to be returned were not those which were seized from the appellant and the goods had deteriorated substantially. In the circumstances, a fresh suit, it was submitted, was clearly maintainable.

7. Having heard the learned Counsel and having perused the pleadings and the oral and documentary evidence, I am of the view that there is no merit in the submission. The learned trial Judge had, in the course of judgment in the earlier suit, declined to accede to the list which was submitted on behalf of the appellant as representing a correct statement of the goods and machinery which had been seized. On the contrary, there was a categoric finding which was recorded by the learned trial Judge that it was the list which was furnished on behalf of the respondent and which was prepared after a panchanama was drawn at the time of demolition, that reflected the correct state of affairs. The learned trial Judge specifically accepted the case of the respondent that the goods which had been seized were old and useless. Therefore, the case of the appellant both in regard to the description of the goods which were seized and in regard to the condition of the goods, was disbelieved. The judgment of the trial Court has been confirmed all the way up to the Supreme Court, a position which has been accepted by the learned Counsel for the appellant.

8. A perusal of the evidence, which has been adduced in the present suit, would be instructive. The first witness who deposed on behalf of the appellant (Pritamsingh P.W. 1) has accepted that the earlier suit was for return of the material and for the price of the goods seized. The witness accepted that the respondent had furnished a

list of material in the earlier suit stating that it was only in possession of the goods to that extent. The witness then deposed to the fact that he had furnished a list of articles in the earlier suit and the list which he has furnished in the present suit was the same as in the earlier suit. This admission of the witness in paragraph 7 of the notes of evidence would be sufficient to reject the claim which has now been made. The claim which is now made is based on the list which was sought to be relied upon in the earlier suit but which was specifically discarded by the learned trial Judge. The witness has also admitted that it was the respondent who had requested the appellant to take away the articles as per its list. The witness admitted that the present suit was in respect of the same articles which the appellant had claimed in the earlier suit which has been dismissed. Evidence in the present proceedings had also been adduced on behalf of respondent D.W. 3 is one Vijay Tanaji Chikate, presently Superintending Engineer with the respondent, who, at the material time on 28-7-1975, had removed the encroachment of the appellant from the plot in question. The witness deposed to the fact that he, at the time of removal of the goods on 28-7-1975, had prepared a list of the articles seized and that he had signed the original list. The witness stated that save and except the articles therein no other articles had been seized. The witness also stated that several letters had been addressed to the appellant to take away the material and even the Court Commissioner had visited the office of the respondent together with the appellant and the bailiff, but the appellant had refused to take the goods.

9. Having regard to the evidence, which has been adduced in the case in the present proceeding, the claim of the appellant, in my view, was clearly misconceived and was liable to be rejected. The appellant in the earlier suit had specifically sought the recovery of the goods which had been seized or the price thereof and damages. Save and except for the order for return of the goods, the claim for recovery of the price and for damages came to be rejected. In the course of execution proceedings, the appellant declined to accept the goods. The entire basis of the claim in the present suit is that the goods which had been seized were new machines and the goods which were sought to be given back were old and not in an operating condition. That basis is directly in the teeth of the finding which has been recorded by the trial Court in the earlier proceedings. The learned trial Judge was justified in taking the view that the Executing Court has clearly acted outside its jurisdiction in granting liberty to the appellant to file a fresh suit for the recovery of the market value of the goods which had been seized. No liberty ought to have been granted in view of the fact that such a decree had not been passed by the trial Court in the earlier suit. The decree was confirmed right up to Supreme Court. The operative direction of the Executing Court was, therefore, clearly a nullity, since it was not open for the Executing Court to go behind the decree passed in the suit. In the aforesaid circumstances, therefore, there is no merit in the appeal. The appeal is accordingly dismissed.