AIR 2009 Cal 82 : (2009) 2 CALLT 685

Calcutta High Court

Case No: C.O. No. 3193 of 2005

Smt. Bandana Das and Another		APPELLANT
	Vs	
Sri Saroj Kumar Das		RESPONDENT

Date of Decision: Dec. 18, 2008

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 151
- Constitution of India, 1950 - Article 227

Citation: AIR 2009 Cal 82 : (2009) 2 CALLT 685

Hon'ble Judges: Biswanath Somadder, J

Bench: Single Bench

Advocate: Aniruddha Chatterjee, Mr. Pradip Kumar Kundu and Mr. M. K. Das, for the Appellant; Siddhartha Lahiri and Mr. Raj Rajeswar Sinha, for the Respondent

Judgement

Biswanath Somadder, J.
Heard the learned advocates appearing on behalf of the parties.

2. This is an application under Article 227 of the Constitution of India in respect of an order, bearing No.65 dated 28th April, 2005, passed by the learned Civil Judge (Senior Division), Sealdah in Miscellaneous Case No.18 of 2003 arising out of Title Execution Case No. 5 of 2000.

3. The petitioners in the instant application were the plaintiffs in Title Suit No. 97 of 1989. They obtained final decree from the learned trial Court on 13th February, 1989 against the opposite party herein, being the defendant in the said suit.

4. By the order impugned, the learned Court below rejected the decree-holders'' petition filed under the provisions of Rule 208 of the Civil Rules and Orders of the High Court, Calcutta, read with section 151 of the Code of Civil Procedure.

5. The learned Court below while rejecting the decree holders petition made the following observations:

"After considering the above case of the parties it is evident that the petitioner has filed the petition for police help for execution the writ of the final decree under Rule 208 of CRO. (It is) evident from the materials on record and from the report of the bailiff that he and learned Commissioner could not execute the writ due to obstruction and resistance of the O.P/Jdr. and such complaint of obstruction and resistance can be made under order 21 rule 97 CPC but, the petitioner/Dhr. did not file and (any) complaint to this effect under this provision. If inspite of the application under order 21 rule 97 of the CPC the decree could not be executed due to active resistance of the O.P. and the existing circumstances and prevailing atmosphere (atmosphere) in the locality and (is) such (that) help is necessary (,) then only police help can be granted. The police help is an extraordinary mode and procedure to implement the writ or (for) execution of a decree and it would only be allowed when the ground as enumerated in the provision of rule 208 of CRO (have been made out). There is nothing in the petition about anything or any ingredients to the serious danger to the public peace and tranquility in that locality or anything of the existence of a grave emergency.

Thus, the instant petition of the petitioner under the above provisions cannot be entertained for granting any police help to execute the final decree at this stage and the same is rejected."

(Note: The words contained in parentheses above have been supplied by this Court to make the impugned order intelligible.)

6. The learned advocate for the petitioners submits that the learned Court below has fallen into serious error of law by observing in the impugned order to the effect that proper recourse for the decree-holders, upon consideration of the report of the bailiff, would have been to file an application under Order XXI Rule 97 of the Code of Civil Procedure, 1908 and not by invoking the provision of rule 208 of the Civil Rules and Orders of the Court, Calcutta. The learned advocate for the petitioners further submits that it has been clearly held by this Court in the case of Panka Lal Bag v. Santosh Kumar Sikdar, reported in AIR 1984 Calcutta 232, that an application for police help is essentially different from an application under Order XXI Rule 97 of the Code of Civil Procedure, 1908 and that the learned Court below ought to have taken into consideration this aspect of the matter and allowed the application filed by the decree-holders.

7. The learned advocate appearing on behalf of the opposite party herein, being the judgment-debtor submits that Order XXI Rule 97 of the Code of Civil Procedure, 1908 provides for a decree-holder to make an application under sub-rule 1 if the decree-holder is resisted or obstructed by any person including the judgment-debtor, while trying to obtain possession of the property. He submits that in the facts and circumstances of the instant case the learned Court below rightly observed that the provision of Order XXI Rule

97 of the Code of Civil Procedure, 1908 was attracted and the decree-holder could not have filed an application under Rule 208 of the Civil Rules and Orders.

8. After considering the submissions made by the learned advocates appearing on behalf of the parties and upon perusing the instant application, I am of the view, the only issue which falls for consideration in the instant application is whether the provision of Rule 208 of the Civil Rules and Orders of the High Court, Calcutta, can be invoked by a decree-holder without having to invoke the provision of Order XXI Rule 97 of the Code of Civil Procedure, 1908, in a fact situation such as this. In order to find out an answer to this issue, I am of the opinion that certain provisions of law are required to be considered in some detail, along with facts of the instant case, as pleaded before the learned Court below. To begin with, Order XXI Rule 97 of the Code of Civil Procedure, 1908, which reads as follows:

"Resistance or obstruction to possession of immovable property - (1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution, of a decree is resisted or obstructed by any person obtaining possession of the property, he make an application to the Court complaining of such resistance or obstruction.

(2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained."

9. Our High Court while framing the Civil Rules and Orders provided a mechanism for decree-holder to obtain police help in execution of a decree when resistance to execution was "anticipated" and actual. The provisions of law under Rule 208 begins with heading:

"6. Resistance to Execution (Anticipated and Actual)," Rule 208 follows thereafter and reads as follows:

"(1) A decree-holder praying for police help in execution shall state: in his application the full reasons thereof, supported, if required, by an affidavit. The Court may further examine the decree-holder or such other persons as it thinks fit touching the necessity of police help. If upon a consideration of all the facts and circumstances, the presiding Judge is of the clear opinion that there are reasonable grounds to suppose that execution will not be effected without serious danger to the public peace, he may, after recording his reason for so doing, make a request to the Superintendent of Police of the district for such police aid as the latter may be able to give in the execution of the writ. It is to be understood that police help is to be regarded as an extreme step and it should not be recommended unless the Court is fully convinced of the existence of a grave emergency.

(2) The requisition to the Superintendent of Police should state in brief the need for such aid, the number and rank of men required, the nature of the process and the place where it is to be executed. It will be for the Superintendent of Police to decide how best and when he will be in a position to offer the help sought.

(a) Costs for police help shall be charged in executing decrees in cases where such help is considered necessary because of apprehensions of violence or obstruction from the judgment-debtor himself. The party concerned shall be ordered to deposit such costs for the service as the Superintendent of" Police may require under the rules of the department.

(b) Costs for police aid shall not be levied in cases where police help is required because of conditions of a general character, such as the locality being in a disturbed state or a class of people, similarly situated, being likely to make a common cause with the judgment-debtor and resist execution.

(c) In cases where a levy of costs is ordered, such costs shall be added to the costs of execution."

10. In the application filed before they learned Court below under Rule 208 of the Civil Rules and Orders read with section 151 of the Code of Civil Procedure, 1908, paragraphs 7, 8, 9, 10 and 11, read as follows:

"(7) The petitioner states that in order to give effect to the final decree passed in the said Title Suit No. 97 of 1989 in the said Title Execution Case No. 5 of 2000, raising the partition wall between the two lots namely Lot A and Lot B as marked in the sketch map by the learned Commissioner which has been made a part of the final decree in the said suit is necessary as well as the erection and/or construction of other structures namely the stair case leading to the roof of the Lot A, construction of latrine, sewerage line, water connection, separate electricity meter etc for the said Lot A which has fallen in the share of the petitioner are necessary as all those structures which are already there have fallen in Lot B of the opposite party. Moreover the opposite party is occupying the ground floor room in the south east corner of the suit premises which has fallen in the share of the petitioner, needs to be vacated by him.

(8) The petitioner states that in order to give effect to the said final decree, by order of this learned Court, the bailiff as well as the learned Commissioner namely Sri Tarun Kumar Bhattacharyya were directed to go to the locale for necessary jobs in order to implement the final decree. Accordingly they went to the locale but no effective work could be done as there was serious danger to the public peace as reported by the Bailiff as well as there was deliberate defiance on behalf of the opposite party in keeping the South East ground floor room under lock and key which could not be broken as there was anticipated resistance to execution on behalf of the opposite party.

(9) The petitioner states that proper implementation of the final decree in the instant matter involves several steps including demarcation for the construction of partition wall after measurement by the learned Commissioner as well as the storage of different building materials in the suit premises and the engagement of masons, labourers etc for effecting necessary constructions as indicated in paragraph 7 hereinbefore.

(10) The petitioner states that the opposite party is a learned lawyer himself and the petitioner is a handicapped person and his wife is also a timid lady with little education and as such they are no match for the opposite party who is constantly threatening the petitioner that he would cause loss or destruction of the building materials as well as kick out the masons or labourers and would not allow any one to enter the premises for the purpose of effecting partition.

(11) The petitioner states that the opposite party has no right to resist entry of the Bailiff, the learned Commissioner as well as the masons and/or labourers in order to give effect to the final decree passed in the said partition suit. In view of that it is necessary that an order may kindly be passed by granting police help as and when necessary in order to assist the Court Bailiff, learned Commissioner and others in the said premises No.56, Paikpara Row, Police Station Chitpur, Calcutta - 700 037 and accordingly the Deputy Commissioner of Police (North), Calcutta be directed to depute one Sub-Inspector of Police and two Constables to render police help to the Court Bailiff and others as and when necessary for effecting complete implementation of the final decree of partition as there may be serious danger to the public peace and an existence of grave emergency may arise without such police help. Accordingly communication may be made to the Chitpur police station by the Deputy Commissioner of Police (North), Calcutta. The petitioner also undertakes to bear the cost of police personnel to assist the Court Bailiff and others in the circumstances of the case."

11. Based on the above pleadings the decree-holder made the following prayers before the learned Court below:

Under the circumstances it is most humbly prayed that Your Honour would be graciously pleased to pass an Order granting police help comprising one Sub-Inspector and two constables to render assistance to the Court Bailiff and others at the time of effecting implementation of the final decree for partition at premises No.56, Paikpara Row, Police Station Chitpur, Calcutta-700 037 and communication be made to the Chitpur police station through the Deputy Commissioner of Police (North) Calcutta and/or pass such other or further orders as to your honour may seems fit and proper.

12. A bare perusal of the pleadings, reproduced hereinabove, would go to show that the bailiff as well as the learned Commissioner who were directed to go to the locale in order to implement the final decree, could not do any effective work as there was serious danger to the public peace as reported by the bailiff and the South East ground floor room, which was under lock and key could not be broken as there was "anticipated" resistance of execution.

13. It is patently clear from a plain reading that the provision of Rule 208 of the Civil Rules and Order of the High Court clearly provides for a mechanism to enable a decree-holder to approach the executing Court for police help for the purpose of execution of a decree, where there is "anticipated" or actual resistance to execution. As has been rightly pointed

out by the learned advocate for the petitioner, relying on the judgment of this Court in the case of Panka Lal Bag (supra), an application for police help is essentially different from an application under Order XXI Rule 97 of the Code of Civil Procedure, 1908. This is clear from paragraph 4 of the said judgment, which is reproduced hereinbelow:

I am not inclined to accept the contention of Mr. Mitra. The limitation for possession after removing the resistance or obstruction to delivery of possession to immovable property decreed is 30 days after the date of resistance or obstruction but the application for police help cannot come within this category. It is not by itself an application for possession nor is it an application under Order 21, Rule 97 of the Civil PC. In an application for police help the applicant''s prayer is to give him the aid of the police for executing the decree for possession which is the ultimate object. The application for police help is different from the main application. It is a subsidiary application to the main application for execution. In this connection, I may refer to a judgment reported in Gaya Nath Ghose Vs. Amulya Chandra Sarkar and Another, . The said judgment supports the view that an application for police help in essentially different from an application under Order 21, Rule 97.

14. The above observations also relies on and refers to Bachawat, J''s judgment in the case of Gaya Nath Ghose v. Amulya Chandra Sarkar & Anr., In my view, it is essential to consider the observations made by Bachawat, J. in Gaya, Nath Ghose''s case, wherein His Lordship, held, inter alia, as follows:

If the decree cannot be effectively executed without police help the decree-holder may apply to the Court for the grant of help. An application for police help is essentially different from an application under Order 21 Rule 97 though the two applications are often joined in one petition. An order for police help vitally affects all persons in actual possession of the property. With the powerful backing of such an order all persons in actual possession whether they are bound by the decree or not are likely to be evicted brevi manu from the property summarily. Relief by way of restoration of possession obtained by an application under Order 21 Rule 100 is poor consolation for a person who is unlawfully dispossessed. The Court should, therefore, proceed with great caution in granting police help. The Court should not hesitate to give such aid if execution of its process is unlawfully obstructed and its process cannot be executed without such aid. But where there is a bona fide claim by an occupant that he is not bound by the decree and as such is entitled to resist eviction in execution of the decree the Court may and should decline to give such aid until his claim is negatived in appropriate proceedings. The claimant is vitally affected by an order for Police help and is entitled to be heard on an application praying for such help. The Court has unfettered discretion and ample power to do justice. The Court may examine any person it thinks fit and hear him. If necessary, the Court may direct notice to all persons in actual possession by advertisement or otherwise. The decree-holder is under a duty to disclose full facts. An order for police help obtained improperly or by suppression of material facts is liable to be set aside.

15. Bachwat J. in the above judgment while observing, inter alia, that an order for police help vitally affects all persons in actual possession of the, property, whether they are bound by the decree or not, and relief by way of restoration of possession is poor consolation for a person who is unlawfully dispossessed, however goes on to add that the Court should not hesitate to give such aid, if execution of its process is unlawfully obstructed and its process cannot be executed without such aid.

16. In the facts of the instant case, taking into consideration the pleadings of the decree-holder in his application for police help under Rule 208 of the Civil Rules and Orders, there was no occasion for the learned Court below to reject the application, by observing, inter alia that complaint of obstruction and resistance was required to be made by the decree-holder under Order XXI Rule 97 of the Code of Civil Procedure, 1908 and the provision of Rule 208 of the Civil Rules and Orders would be attracted only thereafter. It appears that the learned Court below not only failed to take into consideration the specific pleadings contained in the application of the decree-holder, reproduced hereinbefore, but also lost sight of the scope of Rule 208 of the Civil Rules and Orders, which has been discussed in detail hereinbefore.

17. The scheme of the various provisions of the Code of Civil Procedure, 1908, entrusts an obligation upon the Court to ensure that a valid decree passed by it is not frustrated by reason of resistance of someone or some persons who cannot even lay a bona fide claim of not bring bound by the decree and therefore entitled to resist eviction in execution of the decree.

18. Order XXI of the Code of Civil Procedure, 1908, provides for execution of decrees and orders. The elaborate provisions of the various rules and sub-rules thereunder provides the Court mechanism to enable execution of its decrees and orders. In my view, as observed hereinbefore, such procedural law cannot be used to obstruct a valid decree being put into execution by reason of resistance of someone or some persons who cannot even lay a bona fide claim of not being bound by the decree and therefore entitled to resist eviction on execution of the decree. In fact, Order XXI Rule 97 of the Code of Civil Procedure, 1908, is a facilitator to the process of execution and not a hindrance.

19. Rule 208 of the Civil Rules and Orders has been held by our High Court, both in Panka Lal Bag and Gaya Nath Ghose, as essentially different from Order XXI Rule 97 of the Code of Civil Procedure, 1908. In my opinion, such difference is noticeable when one merely looks into the heading of Rule 208 which says, "Resistance to Execution (anticipated and actual)." In other words, the rule has been specifically provided to enable the court to pass necessary orders for police help for execution of a decree even where resistance to execution was merely "anticipated". For reasons discussed above, there is non even an iota of uncertainty that the two provisions of law, namely Order XXI Rule 97 of the Code of Civil Procedure, 1908 and Rule 208 of the Civil Rules and Orders are quintessentially and fundamentally different from such other. The learned Court below, in my opinion, failed to exercise jurisdiction by not taking into consideration such difference,

thereby falling into grave error of law and causing miscarriage of justice, by not facilitating execution of a valid decree by rendering police help in the given fact situation. The impugned order is, therefore, liable to be set aside and the same is hereby set aside.

20. The learned Court below shall take steps forthwith to ensure that necessary police help as prayed for in the decree-holder''s application may be granted so that the decree is executed without any further delay.

21. Immediately after the pronouncement of the judgment in Court, the learned advocate for the opposite party prays for stay which is considered and refused.

Urgent xerox certified copy of this order, if applied for, be given to the parties.