courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 07/01/2026

(1991) 02 CAL CK 0003

Calcutta High Court

Case No: C.O. No. 1915 of 1988

Tapan Dey		APPELLANT
	Vs	
Nilima Das Gupta and Others		RESPONDENT

Date of Decision: Feb. 21, 1991

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115, 115(1), 47

Citation: 95 CWN 1034

Hon'ble Judges: A.M. Bhattacharjee, J; A.K. Nayak, J

Bench: Division Bench

Advocate: Bhaskar Bhattacharjee, for the Appellant; R.N. Mitra, for the Respondent

Final Decision: Dismissed

Judgement

A.M Bhattacharjee, J.

The petitioner has fired so many shots, one after another without any success; but he is still undaunted, notwithstanding his failures. A suit for specific performance of a contract to sell, dismissed by the trial Court, was decreed by this Court. When the decree was put into execution, the petitioner, alleging to be a tenant in respect of a portion of the premises under the Seller/Judgment-Debtor from before the contract of sale, filed objection to the execution u/s 47, CPC and that was the first shot. But his objection was repelled by the executing curt and he moved this Court in revision against that order. That was the second shot which also failed as the re visional application was dismissed by this Court.

2. The petitioner thereafter filed a Civil Suit in the Munsif Court, Alipore praying for a declaration that he was a tenant under the Seller/Judgment-Debtor from before the contract of sale, and as such was not bound by the decree, and for a permanent prohibitory injunction restraining the decree-holder from disturbing his possession. The third shot.

3. The fourth shot was his application under Order 41, Rule 21 of the Code of Civil. Procedure for re-hearing of the First Appeal itself wherein the suit for specific performance was decreed by this Court. Again he failed as the application was dismissed and the Rule was discharged.

4. The fifth shot was an application in the Civil Suit for temporary injunction restraining the decree-holder from disturbing his possession in respect of the alleged tenanted portion in execution of the decree. This also failed and so did the sixth shot being an appeal therefrom to the first appellate court and also the seventh shot, being a revisional application to this Court against the dismissal of the First Miscellaneous Appeal by the First Appellate Court.

5. the decree-holder has then applied to the executing court in the aforesaid execution case for granting police help to the Nazir and the Process-Server and the petitioner fired the eighth shot by putting objection thereto, but again without success. The ninth shot is this re visional application before us against the order of the executing court rejecting his objection.

6. The revisional jurisdiction of this Court u/s 115 of the CPC is very much a circumscribed one and has been much more circumscribed in respect of interlocutory orders by the Proviso added to sub-Section (1) by the CPC (Amendment) Act, 1976. As a result, a revisional application against any such order must not only involve a jurisdictional question, either of illegal assumption, or nonexercise thereof; or exercise thereof illegally or with material irregularity, but must also further be such a one which, if it had been made in favour of the petitioner, would have finally disposed of the proceeding itself or which, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the petitioner.

7. It is difficult to find any jurisdictional error after all these eight rounds of battles have been fought and lost by the petitioner in the Courts including this Court on several occasions and we have found none. The decree put in to execution, and now sought to be stayed, has in fact been passed by a Division Bench of this Court and even assuming, and this we say with respect, the same was in any way irregular illegal, no error of law, however, gross, can entitle this Court in this jurisdiction to go into militant action to correct the same by any amount of judicial activism, unless the same, is a jurisdictional error. The scope of interference by a re visional court u/s 115 of the Code of Civil procedure, as it now stands after the Amendment Act of 1976, has recently been summarised in a Division Bench decision of this Court in Arundhuti Nan and Others Vs. P.M. Daryanani, and it has been pointed out, on a consideration of the leading decisions of both the pre-independence and the post-independence apex Courts, that it is firmly established that the mere fact that the decision is erroneous in fact or in law does not amount to illegal or irregular exercise of jurisdiction and that while exercising the revisional jurisdiction it is not competent for the High Court to correct errors of fact or of law, however, gross of

manifest, unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. In AIR 1949 156 (Privy Council) the Privy Council construed (at 153) the expression "illegally" to mean "any breach of some provisions of Law" and the expression "with material irregularity" to mean "by committing some error of procedure in the course of trial which is material in that it may have affected the ultimate decision". If there is no such illegality or material irregularity, then the High Court, as ruled by the Privy Council, "has no power to interfere because it differs, however profoundly, from the conclusions of the subordinate court upon the question of fact or law". These observations have been quoted with approval and relied on by the Supreme Court in a number of decisions, to wit, in Keshardeo Chamria Vs. Radha Kissen Chamria and Others, .

8. If the case at hand does not satisfy the tests laid down in the body of Section 115(1) of the Code of Civil Procedure, the question whether it nevertheless satisfies the provisions of Clause (a) or Clause (b) of the Proviso to that sub-section would be entirely irrelevant and need not detain us. But even then, it may noted, that in the case at hand the impugned order granting the police help cannot be regarded to have satisfied the provisions of Clause (a) for the obvious reason that even if the point was determined in favour of the petitioner, the proceeding would not have been disposed of. As to clause (b) also, we are inclined to think that the case at hand cannot be said to have satisfied the requirements thereof. Execution of a decree, granted by this Court, and which has stood unshaken in spite of 8 rounds of legal bouts, can never be treated to be an "injury", far less any irreparable injury, and fortiorari execution of such a decree cannot be said to occasion any failure of justice within the meaning of that clause.

9. We accordingly find no substance in this revision and accordingly reject the revisional application. We would make no order as to cost. Records, if any, to go down at once to the executing court for proceeding in accordance with law.

Ajit Kumar Nayak, J.

I agree.