

(2008) 03 CAL CK 0014

Calcutta High Court

Case No: A.P.O. No. 136 of 2006, A.P.O.T. No. 222 of 2006, E.C. No. 15 of 1998, E.O.S. No. 320 of 1998 with A.P.O. No. 162 of 2006, A.P.O.T. No. 271 of 2006 and E.C. No. 15 of 1998

Prema Gupta

APPELLANT

Vs

TCI Finance Ltd. and Another

RESPONDENT

Date of Decision: March 6, 2008

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 100

Citation: (2008) 4 CALLT 175 : (2009) 1 CHN 135

Hon'ble Judges: Pinaki Chandra Ghose, J; Biswanath Somadder, J

Bench: Division Bench

Advocate: Debal Banerji and Bidyut Dutta and R.B. Mitra, for the Appellant; Ghanashyam Patra, for the Respondent

Final Decision: Dismissed

Judgement

1. Both the above appeals have been preferred by the appellant, Prema Gupta, against two orders, being order dated 2nd May, 2006 (in G.A. No. 940 of 2006, E.C. No. 15 of 1998) and order dated 10th May, 2006 (in G.A. No. 4949 of 1998, E.C. No. 15 of 1998 with E.O.S. No. 320 of 1998), passed by the Hon"ble First Court.

2. The appellant Prema Gupta is the mother of the judgment debtor, one Ashok Kumar Gupta, who suffered a decree on 21st August, 1998 passed by a Hyderabad Court for a sum of Rs. 20.91 lakhs approximately. The decree was subsequently transmitted to this High Court for the purpose of execution. It is at the stage of execution of the decree that the appellant Prema Gupta, for the first time, approached the Hon"ble First Court for the purpose of trying to assert the fact that her son Ashok Kumar Gupta, who was the judgment debtor, has no right, title and interest over any of the flats in question, which were to be sold in execution of the decree suffered by her son. The Hon"ble First Court, while passing the order dated 2nd May, 2006 has, inter alia, observed that the Hon"ble Supreme Court had already

recorded in the judgment and order dated 26th September, 2005 that Prema Gupta has never pressed her claim as the owner of the property and that her application for intervention was dismissed by the Hon"ble Supreme Court by an order dated 8th August, 2005. 3. The Hon"ble First Court has further held in the order dated 2nd May, 2006 that the Hon"ble Supreme Court did not reserve her liberty to apply before the Hon"ble First Court after dismissal of her application. It may be perhaps appropriate to refer to the order dated 2nd May, 2006 in its entirety. The same is set out herein below:

The Court: One Ashok Kumar Gupta suffered a decree dated August 21, 1998 in Hyderabad Court for a sum of Rs. 20.91 lakhs approximately. The decree was transmitted to this Court for execution. Thereafter series of litigations were initiated by this Court at the instance of the said Ashok Kumar Gupta either through his wife or his mother or through the new company set up by him to avoid the execution of the decree.

The present application is one of such applications made by his mother. She claims to be the owner of Flat Nos. 6, 7, 8 and 9 of premises No. 12. Loudon Street Calcutta-700 017, which are under possession of the Receiver. The Receiver has already sold the said flats in a public auction subject to confirmation of this Court. I have not yet confirmed the sale.

Ms. Tapati Ghosh, learned Advocate, appearing for the applicant, submits that her client purchased these flats in 1977. She allowed her son to use these flats for running his business. She has not, however, granted any tenancy right to his son or to his business concern.

Earlier the new companies set up by the judgment debtor claimed tenancy of these flats in question under the applicant before me. Neither the applicant did object at that stage nor claimed any ownership as recorded by the Apex Court in the judgment and order dated September 26, 2005 in Civil Appeal Nos. 5893-5894 of 2005. The said judgment of the Apex Court has been annexed to the Affidavit-in-Opposition filed by the decree holder appearing at pages 22-29 thereof.

In page 27 of the said affidavit being internal page six of the said judgment of the Apex Court it was recorded, "at no point of time she had pressed a claim of being the owner of the property."

Ms. Ghosh, appearing for the applicant, submits that in Order 21 Rule 100 of the CPC the Executing Court is the appropriate Court to adjudicate her right. She was mis-advised while approaching the Apex Court. Now, she has approached this Court under Order 21 Rule 100 of the CPC and I should independently examine her right over the property in question irrespective of finding of the Apex Court.

In support of her claim she submits that payments were made in respect of the flats in question in phases by her and/or her husband and her son has no right, title and

interest over any of the flats in question which could be sold in execution of a decree suffered by her son.

I have perused the application. I am convinced that this is another attempt made by the judgment debtor through his mother to avoid the decree which he suffered.

4. The Apex Court already recorded that the applicant before me never pressed her claim as an owner of the property. Her application for intervention was dismissed by the Apex Court by another order dated August 8, 2005. In such application, she claimed for identical reliefs. The Apex Court did not reserve her liberty to apply before me after dismissal of her application by the Apex Court.

The instant application is totally mis-conceived and, as such, is dismissed.

There would, however, be no order as to costs.

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

5. In so far as the other impugned order is concerned, that is to say, the order dated 10th May, 2006 it appears that the said order was passed on an application for sale of the properties of the judgment debtor, wherein Prema Gupta was one of the interested parties who wanted to give her bid, but prayed for further time to consider as she was not in a position to give her bid at that point of time. The order dated 10th May, 2006 is also reproduced hereinbelow in its entirety:

The Court: pursuant to the advertisement the Receiver has received three offers. Out of them one offerer has given an offer below the reserved price and as such the Receiver has rejected his offer. The other two offerers are represented through Advocates before me. The highest offer received by the Receiver is Rs. 57 lakhs I have granted liberty to the parties to outbid the highest offerer. The decree holder has given offer for a sum of Rs. 62 lakhs. One of the interested parties being represented by Ms. Tapati Ghosh being the mother of the judgment debtor also wants to give bid, but she prays for further time to consider as she is not in a position to give her bid right now.

The Receiver is directed to accept the offer given by the decree holder for a sum of Rs. 62 lakhs. Since the offer has been made by the decree holder the amount is to be adjusted as against the decretal sum. The Receiver is, however, directed not to complete the formalities in favour of the decree holder till two weeks after the Summer Vacation. Both the judgment debtor as well as Ms. Ghosh's client are given liberty to bring suitable offer from any outsider to outbid the decree holder. In case any such offer is not received by the Receiver within the stipulated period, the Receiver would be entitled to complete the formalities with regard to execution of Conveyance in favour of the decree holder by way of adjustment of the decretal sum. In case the Receiver receives any suitable offer within the stipulated date, he shall bring it to the notice of the Court. The Receiver is, however, granted liberty to

refund the earnest money to the unsuccessful bidders.

All parties concerned including the Receiver are to act on a xerox signed copy of this dictated order on the usual undertaking.

6. It has been contended before us by the learned Advocate appearing on behalf of the appellant that the first impugned order dated 2nd May, 2006 passed by the Hon"ble First Court is bad in law since the Court had not considered the pro interesse suo application of the appellant and the right, title and interest of the appellant over and in respect of the suit flats remain unexamined. The other aspect of the matter that has been contended before us is that the order of the Hon"ble Supreme Court dated 8th August, 2005 was a non-speaking order and Prema Gupta's application for addition of party in the SLP being rejected by the Hon"ble Supreme Court did not preclude her from taking out the pro interesse suo application before the Hon"ble First Court. The learned Advocate appearing on behalf of the appellant, Prema Gupta, has relied on two judgments of this Court in order to substantiate his submission with regard to the appellant's right to take out a pro interesse suo application for consideration of her right, title and interest over and in respect of the suit flats. The judgments relied on are as follows:

- 1) [Union of India \(UOI\) Vs. Kashi Prosad Agawalla and Others,](#)
- 2) [Central Bank of India Vs. Srish Chandra Guha and Another,](#)

7. The learned Advocate appearing on behalf of the appellant has also relied on the following judgments in order to substantiate the submission that the non-speaking order dated 8th August, 2005 passed by the Hon"ble Supreme Court rejecting Prema Gupta's application for addition of party in the SLP did not preclude her from taking out the pro interesse suo application before the Hon"ble First Court. The judgments relied upon are as follows:

- 1) [Sri Ramnik Vallabhdas Madhvani and Others Vs. Taraben Pravinlal Madhvani,](#)
- 2) [Kunhayammed and Others Vs. State of Kerala and Another,](#)
- 3) AIR Supp 2005 SC 3708 (paragraph No. 28)

8. On the other hand, the learned Advocate appearing on behalf of the respondents has submitted before us that the appeal was not at all maintainable far want of bona fides, which, on the part of the appellant, was transparent. It has also been contended before us that Prema Gupta was none else than the mother of the judgment debtor - Ashok Kumar Gupta and was pretending that she was not aware of the entire earlier litigation until the matter reached the Hon"ble Supreme Court of India in C.A. No. 5893-94 of 2005.

9. It has been further contended before us on behalf of the respondents that in those civil appeals she had filed on application seeking permission to come on record as a necessary party, inter alia, pleading that she was the owner of the

property in question, i.e., flat Nos. 6, 7, 8 and 9 of No. 12; Loudon Street; Calcutta; which was, rejected by the Hon"ble Supreme Court.

10. On behalf of the respondent it has also been submitted before us that what all she pleaded before the Hon"ble Supreme Court for the purpose of being impleaded as a party, has been repeated by her, in substance, before the Hon"ble First Court, as well as before us.

11. Before we proceed to decide the issues as raised in the two appeals, it is necessary to take into consideration certain observations made by the Hon"ble Supreme Court of India in the order dated 26th September, 2005 passed in civil appeal No. 5893-5894 of 2405, ;which have been reflected upon by the Hon"ble First Court.

12. It appears that the Hon"ble Supreme Court in the judgment and order dated 26th September, 2005 has, in respect of Mrs. Prema Gupta, being the appellant herein, inter alia observed as follows:

Respondent No. 1 claimed its tenancy from Mrs. Prema Gupta. Her application to be impleaded as a party in the present proceedings was rejected. At no point of time she had pressed a claim of being the owner of the property.

13. It is also pertinent to take into account the other observation of the Hon"ble Supreme Court of India in the instant matter, apart from the above observation pertaining to Prema Gupta. The Hon"ble Supreme Court has, in the order dated September 26, 2005, further observed as follows:

The Division Bench unnecessarily enlarged the scope of the controversy observing that the matter has assumed the proportion of a full blown suit. It permitted the Execution Court to deal with the matters which are clearly beyond the scope of its adjudication. We, therefore, set aside the impugned order of the Division Bench and affirm that of the learned single Judge of the High Court.

14. It may also be worthwhile to take note of some statements made by Prema Gupta in her affidavit filed before the Hon"ble Supreme Court in response to the show-cause dated 20.12.06 issued by the Hon"ble Supreme Court. The statements appear in paragraphs 5, 6, 7 and 8 of the said affidavit, which are reproduced hereinbelow:

5. I tender my unconditional apology for the language used in paragraph 10(z) of the application for stay being G.A. No. 1473 of 2006, in A.O.P.T. No. 222 of 2006 {Prema Gupta v. TCI Finance Limited and Anr.) filed before the Hon"ble High Court at Calcutta which forms part of the Paper Book, (Volume-II pages 117-118) filed before this Hon"ble Court. I crave leave of this Hon"ble Court to delete and/or amend the same.

6. The aforesaid application for stay (Volume-II pages 100 to 127) was drafted by my counsel I did not fully understand the purport thereof had I realized the meaning and purport of the language used therein, I would have taken immediate steps to drop and/or amend the same, then and there. I again tender my unqualified and sincere apology for the language and in para 10(z) of the said application for stay filed before the Hon"ble High Court.

7. All that I intended to say in the aforesaid paragraph 10(z) of the said application for stay (filed before the Hon"ble High Court) was, that the application for addition of party which was filed by me before this Hon"ble Court in the SLP filed by the plaintiff/decreed holder TCI Finance Ltd., was dismissed by a non-speaking order. This Hon"ble Court may kindly appreciate that the very objectionable sentence also contains the expression "reason". My knowledge of English language is not that good and hence, I could not point out to my learned Advocate, who had drafted the application, to omit the words "and/or explanation", which I sincerely regret and for which I again tender my unconditional apology. Considering my age and being only a house-wife, this Hon"ble Court may kindly forgive me for my unintended lapses.

8. A Constitution Bench of this Hon"ble Court in the case of [Naresh Shridhar Mirajkar and Others Vs. State of Maharashtra and Another](#), has held that proceedings pro-intersee suo to be one of the remedies available to a stranger in respect of whose property, a receiver is appointed by Court of law. I was advised to approach the Hon"ble Court with an application in the pending execution proceedings inter alia, praying for proceedings in pro-intersee suo and hence, I had approached the Hon"ble High Court.

15. The statements of Prema Gupta, as appearing in paragraph 10(z) of the application for stay, being G.A. No. 1473 of 2006, fled before this Court, which was taken note of by the Hon"ble Supreme Court, is also reproduced hereinbelow:

The said application for addition of party filed by your petitioner before the Hon"ble Supreme Court came up for hearing on 8th August, 2005 when the Hon"ble Supreme Court was pleased not to allow the said application. The order dated 8th August, 2005 passed by the Hon"ble Supreme Court thereby dismissing the said application was not supported by any reason and/or explanation. A copy of the said order dated 8th August, 2005 passed by the Hon"ble Supreme Court thereby dismissing the said application is annexed hereto and marked with the Letter "O".

16. We are also not unmindful of the fact that Prema Gupta, being the mother of the judgment debtor - Ashok Kumar Gupta, never, at any point of time, came to press her claim, which fact has been taken note of by the Hon"ble Supreme Court as well as by the Execution Court in the order dated 2nd May, 2006.

17. The Calcutta High Court decision reported in [Union of India \(UOI\) Vs. Kashi Prosad Agawalla and Others](#), which has been relied on by the learned advocate appearing on behalf of the appellant Prema Gupta in the case of Union of India v.

Kashi Prosad Agawalla and Ors. (supra) has been rendered in a completely different fact - situation and has no manner of application at all in the facts and circumstances of the instant case.

18. The only part of the said judgment that may be relevant in the instant case is with regard to the definition of the Latin expression, "pro interesse suo", as appearing in paragraph 18 of the said judgment, which is reproduced hereinbelow:

The latin expression pro interesse suo means in the English language for his own interest; these words are used, especially of a party allowed to intervene for his own interest in a proceeding instituted between other parties.

19. The other judgment of our High Court reported in [Central Bank of India Vs. Srish Chandra Guha and Another](#), also deals with rights of person examined pro interesse suo. Paragraph 9 of the said judgment is reproduced hereinbelow:

A proceeding in pro interesse suo is not provided for either in the CPC or in the Rules of the Original Side of this Court. This is a procedure imported into this country from England. In order to do justice to a person, the Court allows that person to come in and be examined as to his title to the goods or property over which the Court has appointed Receiver in a proceeding between persons other than the said person. That is done so that no person may suffer because of any order that may be passed by the Court. It is the right in such a proceeding of that person who claims to be the owner of the goods or property to be examined as to his title to the said goods or property. It is in that sense a personal right of that person only. That person cannot in my opinion in such a proceeding ask the Court to examine some other person with regard to that person's right or title in the goods or property over which the Court has appointed a Receiver.

20. In the facts of the instant case, however, we find that the observations made by Ghose, J, as reproduced hereinabove; cannot be applied, in view of the observation of the Hon"ble Supreme Court in the order dated 26th September, 2005, wherein it has been expressly recorded that Prema Gupta never pressed her claim as the owner of the property. We also take note of the fact that the judgment debtor - Ashok Kumar Gupta and his mother Prema Gupta stay in the same building, i.e., 12, Loudon Street, Kolkata-700 017, which appears from the cause-title of the stay application of Prema Gupta itself, being G.A. No. 1473 of 2006. Thus, the contention of Prema Gupta, made in her pro interesse suo application, which was filed sometime in the year 2006 in the pending execution proceeding before the Hon"ble First Court, that she came to know about the decree of 1998 passed by the Hyderabad Court and the on-going execution proceeding before the Hon"ble First Court, for the first time, only when the Receiver appointed by the Court came to take symbolic possession over the suit premises on 11th April, 2003, is wholly unacceptable.

21. In so far as the judgments of the Hon"ble Supreme Court relied on by the learned Advocate appearing on behalf of the appellant in respect of the order dated 8th August, 2005 being a non speaking order of the Hon"ble Supreme Court, there is no necessity for us to deal with the same in view of the fact that the appellant Prema Gupta, not having pressed her claim of being owner of the property at any point of time - which fact has also been noted by the Hon"ble Supreme Court in the order dated 26th September, 2005 could not be allowed to have her purported right over the flats in question to be adjudicated upon by the Hon"ble First Court, sitting as the execution Court, which in our opinion, will only tantamount to frustrating the respondent's right to have the decree dated 21st August, 1908 executed in accordance with law.

22. In view of the reasons stated above, there is no necessity for us to interfere with the two impugned orders, being orders dated 2nd May, 2006 and 10th May, 2006, and the two appeals stand accordingly dismissed.

Pinaki Chandra Ghose, J.

23. I agree.

Later:

After the order is pronounced, the learned Advocate appearing on behalf of the appellant prays for stay of this order for four weeks. Accordingly, stay is granted for a period of four weeks from date.