
Sham Lal Vs S.Kamal Deep Singh

Civil Rev. No. 99 Of 2008, CMP No. 102 Of 2008 and Caveat No. 546 Of 2008

Court: Jammu & Kashmir High Court

Date of Decision: July 21, 2008

Acts Referred:

Jammu and Kashmir Civil Procedure Code, 1977 " Order 21 Rule 35, Order 21 Rule 36, Order 21 Rule 97, Order 21 Rule 99

Citation: (2009) 3 JKJ 568

Hon'ble Judges: Sunil Hali, J

Bench: Single Bench

Advocate: Pranav Kohli, K.S.Johal, Advocates appearing for the Parties

Judgement

Caveat No. 546/2008

1. Heard. Discharged.

C.Rev. No. 99/2008 and CMP No. 102/2008

2. This revision petition has arisen from the order passed by the Principal District Judge, Jammu rejecting the application of the objector in

execution proceedings of decree passed in Civil Suit No. 42/Civil, rejecting his claim for impleading as a party in the said proceedings.

3. The compromise decree came to be passed in favour of respondent No. 4 and against respondent 1 to 3 by the court of learned Principal

District Judge, Jammu in Civil Original Suit No. 42/Civil on 20.02.2007. A civil suit was filed by the plaintiff decree holder seeking mandatory

injunction directing the defendants/judgment debtors to remove their belonging and hand over the vacant possession of the shop carved out at

ground floor of M/s Cosmo Bar and Restaurant situated at Vir Marg, Jammu. The plaintiff's case in the suit, briefly, was that by virtue of a licence

agreement executed and registered on 16.01.2001, he had granted licence in favour of the defendants for running M/s Cosmo Bar and Restaurant

existing at the ground floor of Hotel situated at Vir Marg, Jammu. During the currency of the licence, the defendants, however, carved out the shop

in question in the licence premises and started retail business of readymade garments under the name and style of M/s City60 by engaging

salesman.

4. The defendants resisted the suit inter alia contending that the Bar and Restaurant was a matter of fact leased out to them, though the document

was styled as licence deed. The licence to operate the bar was in the name of M/s Cosmo Bar and Restaurant. The defendants admitted carving

out of the shop in the premises and the same was done in the year 2002 with permission of the plaintiff who on that account had received rupees

five lacs from them and had promised to execute a rent deed in respect of the shop so carved out on monthly rent of Rs.20,000/. It was admitted

by the defendants that the shop was opened on 25.05.2002 under the name and style of Blutes Fashion, which was later changed to M/s City60 in

the year 2005.

5. The parties to the suit entered into an out of court compromise in terms of deed of agreement executed by them on 30.12.2007. As per the said

agreement which was filed before the Principal Distt. Judge, Jammu and is on the suit file, the judgment debtors inter alia agreed not to interfere

with premise as also in construction/repair work being carried out therein by the plaintiff/decreed holder. The defendants also agreed to handover

the vacant possession of the shop M/s City60 within a period of two months subject to payment of rupees five lacs. only to them by the plaintiff.

Agreement also empowers the plaintiff to seek execution of decree in so far as it pertains to handing over the possession of the shop in question to

him in case the same was not handed over within a period of two months.

6. The compromise led to passing of the compromise decree on 22.02.2007. The judgment debtors, however, did not hand over the vacant

possession of the shop in question to the decree holder within the stipulated period of two months, which necessitated the plaintiff to file the

execution petition. As a consequence of the filing of the execution petition, warrant of actual delivery of possession of the shop in question to the

decree holder was, thus, issued. The execution of the decree was resisted by the present petitioner, who claims to be in possession of the

property. The application came to be filed by him for seeking impleadment as party respondent in the execution proceedings and seeking stay of

the said proceedings. The petitioner herein contended before the court below that he was in possession of the shop and running business in the

name And style of M/s City60 since 2000 and obtained said shop on rent directly from the decree holder on monthly rupees of Rs. 15,000/ and in

addition having paid rupees ten lac in presence of the judgment debtors to the decree holder.

7. This contention of the petitioner was denied by the decree holderrespondent No.4: It was further contended by him that the judgment debtors

without his knowledge and consent and in violation of the licence agreement firstly carved out the shop in their possession and then sublet the same

to the objector. The possession of the objector in the shop is that of a trespasser.

8. Learned trial court after hearing the parties dismissed the application of the objector for impleadment. Learned District Judge held that the claim

of the objector that he was a tenant of the decree holder has no basis. The trial court further held that the petitioner has not been able to produce

any document which could suggest that he was a tenant of the decree holder. Under these circumstances, the present revision petition is before this

court.

9. I have heard learned counsel for the parties and perused the order of the court below. The necessity for filing the execution petition by the

decree holder was on account of failure on the part of the judgment debtors to handover the vacant possession of the shop under the name and

style of M/s City60 in terms of the compromise deed arrived at between the parties. It is also not in dispute that the shop was carved out by the

judgment debtors, which was given to them on licence. Due to noncompliance of the compromise, the decree holder sought delivery of the shop by

invoking Order 21 Rule 35 CPC. It is in these circumstances that application for impleadment was sought by the present petitioner. Under the

aforesaid provision, there is no scope for entertaining any application for impleadment. The Rule clearly states that where the decree is for the

delivery of any immovable property, possession thereof shall be delivered to the party in favour of whom it has been adjudged. The delivery of

possession can be effected by removing any person bound by decree who refused to vacate the property. Rule 36 Order 21 indicates the mode of

enforcement of decree in respect of tenant or other person who is not bound by the decree. In this case, symbolic possession has to be handed

over to the decree holder.

10. The provision for seeking resistance to delivery of possession of decree holder is contained in Rules 97 to 106 of Order 21 CPC. It is

important to mention that the petitioner has not filed any application under Order 21 Rules 97 and 99 of Order 21 CPC. Both these Rules

contemplate two different situations. Under Rule 97, the decree holder can move the court, if any obstruction or resistance is shown by any person

in obtaining possession of the property, whereas Rule 99 empowers any person other than the judgment debtor, who is dispossessed in pursuance

of the decree for possession to seek restoration of possession. So the objector can file an application seeking restoration of his possession under

Rule 99 of Order 21 CPC only when he is Dispossessed. In case he is not dispossessed, there is no provision, which empowers him to file an

application seeking protection of his dispossession in pursuance of the decree of the court. The petitioner being aware of this limitation has filed

application for seeking impleadment in execution proceedings filed under Order 21 Rule 35 by the decree holder. It has already been discussed

that he has no right to be impleaded as party under the aforesaid provisions. In my opinion, cause to file an application would arise only in case the

petitioner is dispossessed which is what Order 21 Rule 99 CPC contemplates. The claim of the petitioner is that he is a tenant and paying monthly

rent of Rs. 15,000/ to the decree holder has jural relationship with the decree holder. He can assert his right and seek adjudication of the same

before the executing court. In order to establish his right as a tenant, the petitioner has to prima facie show that there is either rent deed executed in

his favour or receipt of the landlord acknowledging him as a tenant. The petitioner has specifically stated that he is paying rent of Rs.15,000/ to the

decree holder, which is not supported by any receipt.

11. The executing court is not obliged to determine the question merely because the resistor has raised it. It must be a question, which may legally

arise between the decree holder and the objector. In the present case, this situation has not arisen as yet as the objector has not been dispossessed

from the premise. Such questions can be contested by the objector and the Court is under obligation to determine any such question, which may

legally arise between the decree holder and the objector but the petitioner has only sought his impleadment in the execution proceedings. The

grievance of the objector has to be determined only after the appropriate application under Order 21 Rule 99 CPC is filed. Objections or an

application filed by the resistor has to be determined by the executing court. It also provides that no independent suit has to be filed in this regard.

The present petition relates only to the impleadment in the execution proceedings, which is not maintainable and occasion to file the same under

Order 21 Rule 99 CPC has not come as yet as the objector has not been dispossessed from the said premise. The court is bound to consider all

the objections which legally arise between the parties if any such application is moved.

12. In view of the above, this petition is not maintainable and the same is dismissed along with connected CMP.