

CASE NO.:
Appeal (civil) 8296 of 2003

PETITIONER:
Ravinder Kaur

RESPONDENT:
Ashok Kumar & Anr.

DATE OF JUDGMENT: 15/10/2003

BENCH:
N.Santosh Hegde & B.P.Singh.

JUDGMENT:
J U D G M E N T

(Arising out SLPÂ©No.9896 of 2003)

SANTOSH HEGDE, J.

Heard learned counsel for the parties.

Leave granted.

The merits of this appeal do not call for an elaborate judgment allowing this appeal. This case is a prime example of how a judicial process is being misused by unscrupulous litigants. We are sorry to note that inspite of the glaring facts of this case, the High Court has succumbed to an unjust plea of the respondents placed before it in a petition under Article 227 of the Constitution of India. It is with an attempt to curb such an abuse of the process of court by unscrupulous litigants, we intend recording the facts of this case somewhat elaborately even though, as stated above, otherwise it may not be necessary to do so.

The appellant herein is the owner of a shop let out to the respondents herein. She filed an ejectment application for eviction of the respondents from Shop No.3 situated in Property No. EK 172/2 of Chowk Panjeer, Jalandhar before the Rent Controller, Jalandhar on 14.2.1997. About three years later on 15.5.2000, the said Rent Controller allowed the said application for ejectment and directed the respondents-tenants to hand over the possession of shop within three months. It is to be noted herein in the said eviction petition one of the specific issues raised pertained to the correctness of the site plan attached to the ejectment petition.. The onus of proving this issue was on the respondents-tenants, but it is seen from the records that they did not address any argument in regard to the same, accordingly the trial court decided the said issue against the respondents.

Against the said judgment of the learned Rent Controller, Jalandhar, the respondents filed an appeal before the Appellate Authority, Jalandhar who dismissed the said appeal affirming the order of the Rent Controller by his order dated 7.2.2001. The aggrieved tenants then preferred a revision petition before the High Court which came to be dismissed on 8.2.2001 granting the respondents time till 31.8.2001 to vacate the suit premises.

The respondents then filed a civil miscellaneous application for recalling the said order of dismissal of their revision petition by the High Court which came to be partly allowed, in the sense, the time given for vacating the premises was extended till 30.4.2002. subject to the condition that the tenants will file an affidavit giving an undertaking to vacate the premises and hand over the same to the landlady on 30.4.2002. This order of the High Court in the recall petition was made on 5.3.2002. It can be noticed herein that

though the landlord had obtained an order of eviction in the month of March, 2000 tenants by virtue of the orders of the courts were permitted to continue in possession till 30.4.2002.

Be that as it may, the tenants were not satisfied with the said extension obtained by them, they preferred a SLP before this Court and the said SLP came to be dismissed in limine by this Court as per its order dated 29.4.2002.

As per the terms of the affidavit filed by the respondents pursuant to the direction issued by this Court, the tenants ought to have vacated the premises by 30.4.2002 which the respondents did not do compelling the appellant herein to take steps to execute the order of eviction which was done by the appellant by moving the executing court. In the said execution the respondents took the contention that the decree obtained by the appellant did not pertain to the premises sought to be taken possession of. They also disputed the correctness of the boundaries of the shop in question. The executing court rejected the said objection of the respondents against which a Civil Revision Petition No.5175/2002 was filed on 3.10.2002 by the respondents. The said revision petition came to be dismissed by the High Court by a reasoned order holding that there was no error in the order of the executing court rejecting the objections raised by the respondents. The High Court in the course of the said order also observed :

"The view taken by the Executing Court does not suffer from any infirmity. The tenants who after having given up the plea taken by them in the written statement, seek to revive the same only with a view to delay their ejection, cannot complain of refusal of the executing court to appoint a local commissioner, specially when they have not led any other evidence in support of their objections."

The respondents-tenants thereafter raised further objections under Order 21 Rule 35 CPC again disputing the site plan and identity of the property. After considering the said objection, the executing court issued a warrant of possession for delivery of the possession of the property. This order issuing the warrant of possession was made by the executing court on 12.11.2002. The respondents on 16.11.2002 filed another application calling upon the executing court to first decide the identity of the property before issuance of warrant of possession on 21.11.2002. In that background, the executing court appointed a Bailiff of the court with the following directions:

"As following property, disputed property, is in possession of JD and the possession of the same be handed over to the decree holder. You are directed that in case any person who bound by it refused to vacate then he should be evicted from the property."

On 26.11.2002, the Bailiff submitted a report that the warrant of possession could not be executed because of some dispute. On 3.12.2002, the executing court passed further orders directing the issuance of warrant of possession for 24.12.2002.

The respondents challenged the said issuance of warrant of 3.12.2002 by way of a revision petition before the High Court on which the High Court was pleased to issue notice.

Since there was no stay order from the High Court, on 24.12.2002, the executing court issued fresh warrant of possession to be executed along with police help, if necessary. Since that warrant also could not be executed, the executing court issued another warrant of possession with a direction that if need be with the police help and by breaking open the locks of the shop, the possession should be handed over to the appellant herein. On

18.1.2003 the Bailiff reported to the executing court that the possession has been delivered to the landlady through the process of court with the help of police and by breaking open the locks of the shop in question.

On 27.1.2003, another application came to be filed by the respondents before the High Court for restitution under Section 144 CPC which came up for consideration and the same was adjourned to 30.1.2003 for filing the reply and for consideration of the said application. On 25.2.2003, the High Court by the impugned order allowed the Civil Revision No.5947/02 directing the executing court to first consider the objections raised by the respondents before taking steps to issue warrants of possession and during the pendency of such consideration it further directed restoration of possession in favour of the respondents.

It is against this order of the High Court, the appellant is before us. We have heard the learned counsel for the parties and perused the records.

The facts narrated herein above clearly shows the site plan of the shop which was leased out to the respondents was annexed to the ejectment petition. The respondents herein did question the correctness of the said site plan. An issue was raised in regard to the correctness of this site plan and as noted above no arguments were addressed in support of the contention that the site plan did not depict the correct area or the correct boundary of the suit property. When first respondent herein was examined in the said proceedings this is what he had to say in his evidence :-
"I have seen the site plan Ext.A-2 of my Shop No.3 and the same is correct."

Therefore, it is clear though for the sake of an objection a dispute in regard to the correctness of the site plan was raised in the objections to the ejectment petition the same was neither supported by evidence nor as could be seen from the records even challenged in arguments. The part of the evidence of the first respondent extracted herein above clearly shows that he admitted the correctness of the site plan.

Against the said eviction order, an appeal was filed before the appellate authority, a revision before the High Court and an SLP before this Court and in none of those proceedings this issue was agitated. Of course, in our opinion, it could not have been agitated also in view of the admissions made by the first respondent. In spite of all these proceedings right up to this Court wherein the respondents concurrently failed and in spite of having given an undertaking to the High Court at the time of obtaining extension of time to vacate the premises by 30.4.2002, the respondents chose not to hand over possession of the property which prima facie, in our opinion, indicates disobedience of the orders of the High Court which directed the tenants to file an undertaking assuring the handing over of possession of the property by a specified date.

The above attitude of the respondents compelled the appellant to file an execution petition in which repeated attempts were made by the respondents to again revive the issue of identity of the property as also the description of the boundaries of the suit property. The executing court time and again rejected this contention holding that this issue is already settled in the original ejectment proceedings, hence, same cannot be reopened. The respondents even moved the High Court in between in revision challenging the rejection of their prayer as to the identity of the property which also came to be rejected by the High Court observing strongly that all these were attempts on the part of the respondents-tenants to delay the execution proceedings. It is only after such attempts of the respondents having failed before the High Court, the appellant was given possession of the suit property by the Bailiff under the orders of the executing court by breaking

open the lock with police help.

We have noted herein above that the delivery warrant, consequent to which the appellant came to be put in possession of the property, was challenged before the High Court in Civil Revision No.5947 of 2003. By the impugned order the High Court without considering the earlier orders of the courts including that of the High Court made in revision filed against the delivery warrant, proceeded to consider the objection of the respondent as to the identity of the suit property as if it was being raised for the first time in the execution petition. It is proceeding on that basis the High Court in the impugned order observed:

"It was imperative for the learned executing court to have considered the objections raised by the present petitioners before taking steps to issue warrants of possession, with a direction that the possession be delivered as per site plan. In my opinion, the learned executing court committed a patent illegality in ordering the issuance of warrants of possession, vide order dated 3.12.2002."

This opinion of the High Court, in our considered view, is wholly erroneous for more than one reason. The objection that the learned Judge referred to in the impugned order raised by the respondent herein was in regard to the correctness of the site plan. As noted earlier this very issue was specifically raised in the original ejectment proceedings and was held against the respondents based mainly on the admission of the first respondent which we have already extracted herein above. At the cost of repetition, we must re-state that this question of identity of the property was never again raised in the appeal before the appellate authority, in the revision before the revisional authority, namely, the High Court or in the SLP before this Court. In such circumstances, we fail to understand how this very issue can be re-agitated in the execution proceeding by the tenants. It is also to be noticed that the executing court has rightly observed that re-opening of this issue would amount to asking that court to go behind the decree which is impermissible in law. We must note this finding of the executing court is not even noticed by the High Court in the impugned order. The High Court also did not take into consideration the reasoning of the co-ordinate bench of the same High Court in the dismissal order made in C.R.P.No.5175/2002 on 29.10.2002 which while rejecting the similar contention of the respondents had specifically observed the attempt of the tenants was with a view to delay their ejectment. In such a factual background, we think the impugned judgment is wholly erroneous having no legal or factual basis to sustain it. We also must notice that the High Court in the impugned order has made an observation which in effect, in our opinion, makes the execution proceedings liable to be dismissed. The said observation is as follow:

"In the present case, it is proved on the record that the shop regarding which the decree-holder was seeking possession during execution proceedings was not the one regarding which the ejectment order had been passed by the Rent Controller. Neither the description had tallied nor the boundaries tallied."

This observation is contrary to the finding on Issue No.7 in the original proceedings. That apart this observation is so emphatic that by this the execution petition itself was liable to be dismissed making the eviction decree infructuous. It is not the normal practice of the superior courts to give a conclusive finding in matters which it remands for further consideration because after a conclusive finding there is nothing to be decided by the court to

which the matter is remanded.

All these facts apart, we notice that nowhere in the petition the respondents-tenants claim to be in possession of any shop other than Shop No. 3 in regard to which they have suffered an eviction order. It is not their case that they are also in possession of some other property in regard to which there is no eviction order but the landlord is trying to take possession in these execution proceedings. We have specifically asked the learned counsel appearing for the respondents that apart from Shop No.3 belonging to the appellant - are the respondents in possession of any part of property bearing No. EK 172/2 situated at Chowk Panjeer, Jalandhar. The learned counsel was not able to give any satisfactory reply to our question which would only mean that the respondents are not in possession of any other property other than Shop No.3 leased out to them in the above-mentioned property belonging to the appellant. That is also why they prayed for restoration of possession. Therefore, raising a dispute in regard to the description or identity of the suit schedule property or a dispute in regard to the boundary of the suit schedule property is only a bogey to delay the eviction by the abuse of the process of court. Courts of law should be careful enough to see through such diabolical plans of the judgment debtors to deny the decree holders the fruits of the decree obtained by them. This type of errors on the part of the judicial forums only encourage frivolous and cantankerous litigations causing laws delay and bringing bad name to the judicial system.

For the reasons stated above, this appeal succeeds, the impugned order of the High Court is set aside with exemplary cost of Rs.25,000/-.