

PETITIONER:
M.P.E.B.

Vs.

RESPONDENT:
CENTRAL INDIA ELECTRIC SUPPLY CO. LTD.

DATE OF JUDGMENT 03/01/1995

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
MANOHAR SUJATA V. (J)

CITATION:
1995 SCC (1) 364 JT 1995 (1) 312
1995 SCALE (1) 54

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by B.P. JEEVAN REDDY, J.- Leave granted. Heard counsel for the parties.

2. This appeal is preferred against the judgment of a learned Single Judge of the Madhya Pradesh High Court dismissing the civil revision petition filed by the appellant. The civil revision petition was preferred against the judgment of the Third Additional District Judge to the Court of District Judge, Bilaspur in Execution Case No. 17-A of 1970 whereunder the learned Judge had allowed the application filed by the respondent-judgment debtor.

3. The appellant-decree-holder, Madhya Pradesh Electricity Board, is a statutory corporation constituted under Section 5 of the Indian Electricity Act, 1910. The Government of Madhya Pradesh had granted a licence to the respondent under the said Act for generating and supplying electricity to consumers at Bilaspur. The appellant exercised the option of purchasing the respondent's undertaking on 15-1-1963 and 5-4-1964 as provided by Section 6 of the Act. Accordingly, the possession of the undertaking was delivered to the appellant but while doing so, the respondent did not deliver possession of properties described in Schedule 1 and Schedule 11 to the plaintiff. The appellant was, therefore, obliged to file the Civil Suit No. 17-A of 1960 for obtaining possession of the said properties on the ground that they form part of the undertaking. The suit was decreed by the trial court on 25-8-1973. The respondent and some other persons preferred an appeal to the Madhya Pradesh High Court being First Appeal No. 39 of 1974. The respondent raised a contention in the said appeal that the property mentioned in Schedule 11 to the plaintiff was sold to other appellants and, therefore, did not form part of the undertaking. This plea was rejected by the High Court which held that the property in both the Schedules did form part of the undertaking. While dismissing the appeal the High

Court observed: "We may, however,
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add that it would be open to defendant 1 to seek compensation for these properties in an appropriate proceeding in accordance with law." The appeal was accordingly dismissed with costs.

4. The appellant took out execution of the decree, wherein the first respondent filed objections purporting to be under Section 47 of the Civil Procedure Code to the effect that the compensation payable to him for the suit property should be determined and should be directed to be paid to him in the said proceeding itself. This objection was upheld by the executing court which found that the book value of the Schedule 1 properties is Rs 1, 15,000 and that of Schedule 11 properties Rs 9574.50 paise, a total of Rs 1,24,574.50. The objections filed by the respondent were allowed in the following terms:

"In the result, the application is allowed. It is ordered that the M.P. Electricity Board (decree-holder) shall within two months from today deposit in Court for being paid to the applicants/judgment-debtors compensation of Rs 1,24,574.50 (Rs One lakh twenty-four thousand five hundred and seventy-four and paise fifty only), failing which they shall also be liabl

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to pay interest calculated at the bank rate of Reserve Bank of India, plus one per cent from today till payment. The applicants shall be entitled to receive the compensation on payment of requisite court fees as provided by law."

The executing court recorded in para 10 of its order that "possession of the suit properties was ultimately delivered to the decree-holder on 27-12-1983 through the process of this Court in the present execution proceedings".

5. It is against the said order that the appellant filed a civil revision petition before the High Court. The appellant's contention was that the determination of compensation is outside the purview of the executing court and outside the purview of Section 47 of the Civil Procedure Code as well. Relying upon the observations made in the judgment of the High Court in First Appeal No. 39 of 1974, the appellant contended that the only course open to the respondent is to file a suit in accordance with law, if it is so advised. The learned Single Judge rejected this contention holding that Section 47 is wide enough and the executing court is competent to decide the question of compensation for the suit properties thereunder. The correctness of the said view is questioned in this appeal.

6. In our opinion, it is unnecessary to go into the scope of Section 47 of the Civil Procedure Code in the present proceedings for the reason that while dismissing the appeal preferred by the first respondent-judgment-debtor and other appellants, the High Court had observed that so far as compensation is concerned "it would be open to defendant 1 to seek compensation for the properties in an appropriate proceeding in accordance with law". The words "in an appropriate proceeding" in the said observation cannot certainly mean execution proceeding of the very same decree, which is but the same proceeding. The said words meant a separate independent proceeding. It is not for us to express any opinion whether the proceeding contemplated is a
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suit or any other proceeding. Suffice it to say that it

does not certainly take in execution proceedings of the very same decree. On this ground alone the appeal is allowed and the judgment of the executing court as well as the judgment of the High Court affirming it are set aside and the objections filed by the first respondent under Section 47 of the Civil Procedure Code are dismissed as not maintainable.

7. Mr Harish Salve, learned counsel for the first respondent-judgment debtor requested towards the end of the arguments that in such an eventuality his objection petition filed under Section 47 of the Civil Procedure Code may be allowed to be converted into a suit. Though we were inclined to accede to the said request at first, we are of the opinion, on a further consideration, that the proper course would be to leave it open to the first respondent to institute a suit or adopt such other proceeding as may be open to him in accordance with law and to direct that if such proceedings are taken within a period of three months from today, the first respondent shall be entitled to claim the benefit of Section 14 of the Limitation Act for the period spent in pursuing the proceedings under Section 47 including the period spent in appellate courts.

8. Mr G.L. Sanghi, learned counsel for the appellant made a grievance that possession of all the suit properties have not been delivered to the appellant and that the first respondent and other parties at its instance and on its behalf are raising obstruction in obtaining possession of the properties. We have already referred to the observation of the executing court that possession of the suit properties was delivered to the appellant through the Court even on 27-12-1983. Mr Salve, learned counsel for the first respondent affirmed the said fact and stated that the first respondent is not in possession of any of the suit properties and that they were delivered to the appellant as recorded by the executing court. It is made clear that the appellant is entitled to take possession and be in possession of all the suit properties, without any obstruction by respondent or any person claiming through it.

9. The appeal is accordingly allowed. No costs.