Lajwanti

Vs

Lal Chand and Others

Civil Appeal No. 687 of 1965

(J. C. Shah, V. Ramaswami – I, G. K. Mitter JJ)

22.03.1968

JUDGMENT

MITTER, J.-

This is an appeal by special leave from a judgment and order of the Punjab High Court in Letters Patent Appeal No. 405 of 1956.

The matter arises out of an application for execution of an order for possession passed on a compromise between the parties. The Division Bench of the Punjab High Court felt itself unable to help the decree-holder because of an earlier decision in the execution proceedings which was held to constitute res judicata against her. The main question for consideration is, whether it was right in doing so.

The relevant facts are as follows. As far back April 1950, Harbans Lal, the late husband of the appellant before us, obtained an order for eviction from the Rent Controller against Lal Chand and Ram Rattan Dass Jain in respect of certain premises which were being used as a factory. This decree was upheld in appeal and in July 1951 the decree-holder applied for execution. The court bailiff made a report dated the 14th July 1951 that on his going to give delivery of possession resistance was offered by a number of persons and being apprehensive of breach of peace he could not effect delivery of possession. The judgment debtors appear to have approached the Department of Industries and informed them of the attempt at their eviction by the decree-holder. The copy of a letter from the Extra Assistant Director of Industries to the Chief Inspector of Factories dated July 18, 1951 exhibited at the instance of the judgment-debtors goes to show that the machinery installed in the factory could not be removed without the prior permission of the Chief Inspector of Factories. Obviously the judgment-debtors wanted to thwart the decree-holder from getting possession through court by invoking the aid of the East Punjab Factories (Control of Dismantling) Act XX of 1948, hereinafter referred to as the Act. The judgment-debtors applied for stay of execution of the decree on August 23, 1951. The Subordinate Judge issued notices but did not grant stay. On appeal the District Judge accepted the appeal noting that the Subordinate Judge had not given any finding about the applicability of the Act. He had before him the report of the bailiff that possession of the premises could not be given over as there were machinery stored therein. By order dated October 11, 1951 he directed the Subordinate Judge to decide the objections under the Act.

The Subordinate Judge framed a number of issues including one which read : 'whether the judgment-debtors could not be dispossessed of the factory and machinery could not be dismantled without permission of the Government ?" Taking evidence of the parties and noting the contents of the letter of the Industries Department, he observed that the judgment-debtors had not secured

permission but the decree-holder might follow up the matter through court. He stayed execution of the decree in so far as it involved the dismantling or removal of the machinery but allowed the same for securing possession of the part of the premises where no machinery was stored. This was on 7th February, 1953.

Both parties filed appeals from this order which were dismissed. The appellate court was of the view that machinery and spare Parts were lying practically in all the rooms of the building and the locking and sealing of the factory would result in its closure which would go against the provisions of the above-mentioned Act. The decree-holder was therefore directed to pursue the matter with the State Government. Incidentally, the court noted that the decree-holder had not challenged the proposition that the court could not order delivery of possession without the requisite sanction for the dismantling of the factory. This order dated 22nd April 1953 was not challenged by any appeal to the High Court. It appears that the court consigned the execution proceedings to the record room on July 25, 1953.

On August 18, 1953 the decree-holder applied for execution proceedings being re-started. On November 7, 1953 the executing court observed that a reply from the State Government had been received to the effect that permission for demolition of the factory could not be given. The execution file was therefore ordered to be consigned to the record room once more. From this order, an appeal was preferred by the decree-holder. The Additional District Judge held that in view of the imperative provisions of section 3 of the Act the decree-holder could not be granted possession in execution of the decree and dismissed the appeal by order dated January 8, 1954. On further appeal, a learned Judge of the High court by order dated July 13, 1955 observed that in the execution proceedings no evidence had been adduced on the points arising under Punjab Act XX of 1948. He therefore said as follows :

> "On the present record it is not possible for me to decide whether the execution of the decree would defeat the provisions of section 3 of the Punjab Act XX of 1948. That being the position of matters, I set aside the order passed by the Subordinate courts and direct the court of execution to give fresh decision on the points that arise under section 3 of Punjab Act XX of 1948.
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> In proceedings pursuant to this order parties will be given opportunity to examine bearing on the points that arise under section 3 of Punjab Act XX of 1948."

On remand the Subordinate Judge by order dated 30th December, 1955 held that the Act was not intended to cover involuntary dismantling in execution of orders of competent courts : further the Rent Restriction Act, 1949 passed after Act XX of 1948 did not take any notice of the prohibition contained in the said Act. In the result he found that the respondent was liable to be ejected in execution of the decree for eviction but as the application had become over a year old it would be struck off the file and the decree-holder be at liberty to take out execution of the decree by a fresh application.

The judgment-debtors went up in appeal to the court of the District Judge. The District Judge by order dated December 31, 1956 held that the Act did not apply to involuntary dismantling of factories and that the issue raised by the Subordinate Judge in this connection did not arise but in fact it had been decided against the landlord by the High Court in Revision. According to him, the order of the High Court went to show that s. 3 of Act XX of 1948 covered delivery of possession even in execution of the order of the Rent Controller for otherwise the revision application would

have been accepted by him straightway. In the result he dismissed the execution petition.

The appellant went up in Second Appeal to the High Court at Chandigarh. A single Judge of that Court dismissed the appeal. The decree-holder filed a Letters Patent Appeal. Although of the view that delivery of possession was not barred in execution of the decree by Act XX of 1948, the Division Bench concluded that so far as the parties before it were concerned, the matter had become res judicata in consequence of decisions of the executing court and the first appellate court on the first execution application and the decision of a single Judge in revision on the previous occasion in the second execution application.

Section 3 sub-s. (1) of East Punjab Act XX of 1948 provides as follows :

> "No person shall, without the written permission of the State Government or of an officer authorised in this behalf by the State Government, dismantle any factory or remove from a factory any spare parts kept for maintaining the machinery of the factory in order."

The Act which contains only eight sections makes no reference to any decree for possession against the owner of a factory. By ordering delivery of possession of the premises the executing court does not make an order for dismantling a factory and a bailiff charged with execution of a warrant for possession does not infringe the above provision of law by rendering possession of the property to the decree-holder. So far as the judgment-debtor, the owner of the factory, is concerned, it would be his look out to take the matter up with the State Government, if necessary and we have no doubt that in a case like this where there is no collusion between the decree-holder and the judgment-debtors the State Government would not prosecute the judgment-debtors or refuse to accord sanction to the judgment-debtors for removal of the machinery from the premises of which they could not lawfully continue in possession.

It appears that the Subordinate Judge, the District Judge and the Judges of the Punjab High Court were all of the view that the Act did not bar the delivery of possession in execution of a decree.

In our opinion there was no final order about the inexecutability of the decree on the first application for execution which was consigned to the record room by order dated July 25, 1953. Further, the judgment of the learned single Judge for the Punjab High Court dated July 13, 1955 did not decide the question as to whether the decree for possession would be inexecutable in view of Act XX of 1948. He stated expressly that it was not possible for him to decide whether the execution of the decree would defeat the provisions of s. 3 of Punjab Act XX of 1948 and being unable to come to a decision on the record he remanded the matter to the court of execution. He found himself unable to interpret the section on the evidence before him. The proceedings subsequent to the remand order culminated in the order of the Division Bench from which the present appeal arises. The order dated July 13, 1955 was not a final order which put a seal on the proceedings.

The course of litigation subsequent to the order for eviction in 1950 is truly amazing. For 17 years the decree-holder has been unable to reap the fruits of the decree although practically all the courts felt that the Act of 1948 could not be called in aid by the judgment-debtors to resist execution by delivery of possession. We cannot but condemn in very strong terms the attitude of the judgment-debtors who, to say the least, are persons who have little regard for sanctity of their own solemn promise made before a court of law. On June 29, 1950 in Miscellaneous Civil Appeal No. 39 of

1950 they stated on oath that they had reached an agreement with the landlord that they would "remain on the premises only up till 31st March 1951 when they would of their own accord vacate the premises" and on their failure to do so the landlord would be entitled to take out execution against them. Even before the time to vacate the premises came, one of the judgment-debtors filed a suit for a perpetual injunction to restrain the decree-holder from obtaining possession in terms of the consent order of 29th June 1950. The suit was dismissed on July 11, 1951. The judgment-debtors also lost the appeal filed against that dismissal. At every step and turn for nearly two decades they have successfully resisted delivery of possession by raising an illusory plea.

Learned counsel for the respondents argued that even now his clients can urge the plea that the decree was not executable because of the provisions of Act XX of 1948. According to him, the agreement was in contravention of a statute and the respondents could not be estopped from pleading or proving facts which would render the agreement void. His case was that Act XX of 1948 being in force on June 29, 1950 any agreement arrived at between the parties in contravention of its provisions would not be binding on the parties. No exceptions can be taken to the broad proposition of law but no question of estoppel ever arose in this case because Act XX of 1948 did not operate as a bar to the delivery of possession of premises in execution of a decree.

In the result, the appeal is allowed with costs throughout from the 18th August 1953 irrespective of any order in that behalf made at any time thereafter. It is unfortunate that the decree-holder has been kept out of possession so long; but she is partly responsible for it herself. If she had preferred an appeal from the order of the District Judge passed on 22nd April, 1953 to the High Court, probably her troubles would have ended long ago.

Appeal allowed.##

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