

Shri Jodhayan

Vs

Babu Ram and Others

Civil Appeal No. 94 of 1972

(Baharul Islam, D. A. Desai. V. B. Eradi JJ)

23.11.1982

JUDGMENT

BAHARUL ISLAM, J. –

1. In this appeal by special leave under Article 136 of the Constitution, the appellant is the victim of court's craze for technicalities of law at the cost of justice. This Court exercises its discretionary power under Article 136 of the Constitution to meet the ends of justice or to remove miscarriage of justice perpetrated in a case.

2. This appeal arises out of an execution proceedings. The facts material for the purpose of disposal of this appeal may be stated thus. The appellant was the plaintiff in a pre-emption suit and got a decree. Respondent 1 was the vendee and respondent 2, who was the real brother of the plaintiff-appellant, was the vendor. The suit was for pre-emption and possess in respect of some agricultural land. The trial court decreed the suit on payment of Rs. 15,500 as the price of the land and Rs. 100 as the charges on account of registration and other charges of the deed. The appellant deposited the amount as directed by the court.

3. Respondent I filed an appeal and the Additional District Judge who heard and disposed of the appeal dismissed the appeal with the modification directing the appellant to deposit a sum of Rs. 1836.25 more in the trial court for payment to the vendee, within April 15, 1967 : in case of failure the suit was directed to be dismissed. On April 14, 1967, the appellant deposited Rs. 1836 instead of Rs. 1836.25. He, however, made good the short deposit of 25 paise on October 28, 1968 with the permission of the court on the allegation that the omission to deposit 25 paise was due to bona fide mistake. Respondent I filed a regular second appeal before the High Court of the Punjab and Haryana. The High court affirmed the decree of the first appellate court but ordered the appellant to deposit a further sum of Rs. 500 for the improvements made to the land. The appellant was given three months time to make the payment of the said sum of Rs. 500 failing which it was directed the suit would stand dismissed. The appellant deposited this sum too within the time limit.

4. The appellant on October 28, 1968 filed an execution case before the executing court to get possession of the suit land. The executing court issued notice to the judgment-debtor (respondent 1 herein). The judgment-debtor filed an application under Order 20, Rule 14 (1) (b) of the Code of Civil Procedure on the ground inter alia, that the appellant was directed to make the payment of the sum of Rs. 1836.25 within April 16, 1967 but the appellant had deposited only a sum of Rs. 1836 within the due date and the amount fell short of 25 paise and as such the execution proceedings should be struck off. The appellant filed a rejoinder to the objection petition of the judgment-debtor. His plea was that he short deposit of 25 paise was due to a bona fide mistake on this part, but that

the shortage was made good on October 28, 1968 after obtaining necessary permission from the trial court. The executing court, by its order dated February 1, 1969 held that the short deposit of 25 paise was due to a bona fide mistake on the part of the decree-holder and overruled the objection of the judgment-debtor, taking the view that in the interest of justice the default on the part of the decree-holder should be condoned. The judgment-debtor preferred an appeal in the court of the II Additional District Judge who, by his order dated October 24, 1965 set aside the order of the executing court. He held that the provisions of Order 20, Rule 14 (1) (b) of the Code of Civil Procedure were mandatory, and as such the suit should be deemed to have stood dismissed. He also held that the short deposit of 25 paise was not on account of mistake and the default could not be condoned.

5. The appellant preferred a second execution appeal, being Execution Second Appeal No. 1941 of 1969 in the High Court. The appeal was however presented without a certified copy of the order of the executing court. The appellant however, made an application for dispensing with the filing of the certified copy. The High Court while admitting the appeal passed the following order :

Admitted. Certified copy to be filed as soon as it is available....

Sd/- R. S. Narula November 25, 1969.##

The appellant obtained the certified copy on June 3, 1970 and filed it in the High Court, on June 10, 1970. The appellant filed an application on July, 17, 1970 under the section 5 of the Limitation Act for the condonation of the delay. The second appeal came up for hearing on March 25, 1971 before a Single Judge. Respondent 1 raised the preliminary objection that the appeal was barred by limitation. The objection was upheld by the learned Single Judge; as a result he dismissed the execution second appeal filed by the appellant herein. The appellant prayed for leave to appeal under the letters patent. The prayer was also rejected.

6. Hence this appeal by special leave.

7. Shri S. K. Mehta, learned counsel appearing for respondent 1 submitted that the execution appeal filed by the appellant in the High court was incompetent as the certified copy of the impugned order of the lower appellate court was not filed along with the memorandum of appeal. We do not find any substance in the submission for the reason, as we have already stated above, that the appellant was granted time by the High Court at the time of the admission and was allowed to file the certified copy "as soon as it is available." It is not the contention of the respondent that the copy was not filed at all nor it is his submission that the court had no power to grant time to file the copy of the impugned order. As stated above, the copy was obtained on June 3, 1970 and filed in the court on June 10, 1970 seven days after the copy was obtained. So he filed the petition under Section 5 of the Limitation Act. There was no reason as to why the delay could not be condoned. That apart, under section 148 of the Code of Civil Procedure, the court has enough power to enlarge time from time to time. Section 148 provides :

Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Code, the Court may in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.

8. The power given to the court under Section 148 is discretionary and is given for the purpose of securing the ends of justice in case of necessity. In our opinion, the High court committed an error

in not adverting to, and not exercising its powers under Section 148, CPC and in dismissing the appeal without going to the merit of the matter.

9. Mr. Mehta drew our attention to the second proviso to sub rule (2) of Order 41, Rule 1, CPC as amended by Punjab, Haryana and Chandigarh. The amendments is in the following words :

Provided further that the Court may permit the appeal to be filed with true copies duly authenticated by an advocate as correct.

10. This provision hardly helps him. It is not understandable, how the counsel for the appellant could file 'true copies', when his client had not obtained the certified copy of the order in question.

11. The next question for decision is whether the first execution appellate court was justified in holding that the amount directed to be deposited was not deposited as it fell short by 25 paise. Order 20, Rule 14, CPC provides :

Decree in pre-emption suit - (1) where the Court decrees a claim to pre-emption in respect of a particular sale of property and the purchase money has not been paid into Court, the decree shall -

(a) specify a day on or before which the purchase money shall be so paid and

(b) direct that on payment into Court of such purchase money, together with the costs (if any) decreed against the plaintiff on or before the day referred to in clause (a), the defendant shall deliver possession of the property to the plaintiff whose title thereto shall be deemed to have accrued from the date of such payment but that, if the purchase money and the costs (if any) are not so paid, the suit shall be dismissed with costs.

#* * *##

12. Under Order 20, Rule 14, CPC, the plaintiff decree-holder in order to get delivery of possession of the land has to fulfil two conditions; he has to deposit in court (i) the purchase money together with the cost, if any, decreed against him and (ii) the deposit must be made on or before the date fixed by the Court.

13. Here the admitted position is that the appellant deposited the entire amount of purchase money together with the costs decreed against him, less 25 paise within the time fixed by the Court and 25 paise too was deposited but beyond, time. The executing court held that the short deposit was due to a bona fide mistake, while the executing appellate court held that it was not due to any bona fide mistake, while the executing appellate court held that it was not due to any bona fide mistake, but it was default and thereby the executing appellate court deprived the decree-holder of the legitimate fruits of the decree he obtained in all the courts. The finding of the first executing appellate court that the non-deposit could not be due to any bona fide mistake is absolutely untenable for the reason that while the appellant has deposited in total Rs. 17,936 from time as directed by the court, there was absolutely no reason as to why he would not have deposited 25 paise, unless it was due to a mistake. This was permanently a case in which the first execution appellate court ought to have exercised its discretionary powers under section 148, CPC and accepted the delayed deposit of 25 paise as was done by the original executing court.

14. In the result, we allow the appeal with costs, set aside the orders of the High Court as well as the first execution appellate court and restore the order of the original executing court.

</html