

Kashi Ram

Vs

Rakesh Arora

Civil Appeal No. 289 of 1982

(Sabyasachi Mukharji, G. L. Oza JJ)

18.08.1987

JUDGMENT

SABYASACHI MUKHARJI, J. -

1. This appeal by special leave arises from the order of the High Court of Delhi dated July 17, 1981 dismissing the second appeal in limine against the order dated July 2, 1981 in RCA No. 871 of 1980 of the Rent Control Tribunal, Delhi.
2. The order of eviction in this case on the ground of bona fide requirement of the landlord was passed by the Rent Controller on or about October 15, 1960. There was an appeal from the said order of the Rent Controller and the appeal was dismissed on or about October 9, 1961 by the Rent Tribunal. In May 1962 the respondent filed an application before the Competent Authority under Section 19 of the Slum Areas (Improvement and Clearance) Act, 1956 (hereinafter called 'the Slum Act') for permission to execute the order of eviction.
3. On or about March 21, 1963 the said application was dismissed by the Competent Authority under the Slum Act. In the meantime in January 1964, the Limitation Act, 1963 came into operation. On April 19, 1978, the respondent filed a second application before the Competent Authority for permission to execute the order of eviction. In June 1979 permission was granted by the appropriate authority under the Slum Act. On August 28, 1979 the appeal from the said Rent Controller was dismissed by the High Court. Thereafter on or about September 25, 1979 the respondent herein filed an application before the Rent Controller for execution of the decree. Objections under Section 47, Order 21 Rule 22 and Section 151, Code of Civil Procedure were filed on behalf of the appellant. On August 22, 1980 order was passed by the Rent Controller that the execution application was not barred by limitation. Execution was stayed, however, to decide the question of fresh tenancy.
4. There was an appeal under Section 38 of the Delhi Rent Control Act, 1958 filed by the appellant against the order of August 22, 1980. Thereafter the Tribunal in July 1981 ordered that the execution was maintainable and was not barred by limitation and it was further held that supplementary objections were not maintainable. On July 17, 1981 the High Court dismissed in limine the second appeal from the same as aforesaid.
5. The question that falls for consideration is whether the decree for eviction of the tenant under the Rent Act passed against the appellant was executable by the respondent or whether the same had become barred by limitation or by principles of res judicata. As mentioned hereinbefore the decree holder had filed an application under Section 19 of the Slum Act to obtain the permission from the

Competent Authority in the year 1962. The permission was not granted and the application was dismissed in the year 1963. The decree holder filed a fresh application seeking permission from the Competent Authority in the year 1978. The permission was granted by the order dated June 18, 1979. Thereafter on September 25, 1979 the decree holder filed application seeking execution of the order of eviction.

6. The main objection raised by the appellant on the point of limitation was firstly, that the decree in question was passed in 1960 and therefore the decree holder ought to have got it executed within 12 years by 1970. Secondly, it was contended that the application under Section 19 of the Slum Act was filed in the month of March 1975 (sic) but the decree holder did not take any steps for 12 years which expired before March 20, 1975 to obtain permission from the Competent Authority and from that aspect also the execution application was time barred.

7. There are two aspects of the matter which have to be borne in mind, one was, when the decree became executable in the facts and circumstances of the case and what would be the period applicable for such execution. On the other aspect of the matter, it is necessary to consider the question whether once permission under the Slum Act was refused, does it create res judicata for the second application ?

8. As mentioned hereinbefore the Rent Controller by the impugned order held that the execution application was not barred by time because in the opinion of the said Rent Controller till such time the permission of the Competent Authority (Slums) was obtained, no execution application could have been filed. The trial court further held that the amendment to Section 19 of the Slum Act did not affect the pending execution application, or in other words, limitation would not have started running. However, the trial court held that in regard to dispute about the creation of fresh tenancy the matter required investigation and after holding that execution application was within the time adjourned the case for evidence of the appellant and stayed the execution during the pendency of the said objections. The said objections have been overruled and these are not subject matter of this appeal.

9. Aggrieved by the said order the appellant filed appeal before the Rent Tribunal. The Tribunal noted the relevant provisions of the Slum Act. Section 19(1) as it stood before the amendment read as follows :

19(1) notwithstanding anything contained in any other law for the time being in force, no person who has obtained any decree or order for the eviction of a tenant from any building in a slum area shall be entitled to execute such decree or order except with the previous permission in writing of the competent authority.

10. Section 19(1) of the said Act now reads as follows :

19(1) Notwithstanding anything contained in any other law for the time being in force, no person shall, except with the previous permission in writing of the competent authority,

(a) institute, after the commencement of the Slum Areas (Improvement and Clearance) Amendment Act, 1964, any suit or proceeding for obtaining any decree or order for the eviction of a tenant from any building or land in a slum area; or. ....

11. It is not disputed that 12 years had expired when the execution petition was filed from the date

of the order of eviction but not from the date the permission of the Competent Authority (Slums) was obtained. The question, therefore, is whether the Indian Limitation Act, 1908 or Limitation Act, 1963 was applicable to the execution proceedings and whether the limitation would start running from the date the permission of the Competent Authority (Slums) was obtained.

12. So far as the first question about the applicability of the Limitation act, it is necessary to refer to Section 42 of the Delhi Rent Control Act, 1958 (hereinafter called 'the Act') which provided that an order of eviction has to be executed like a decree of the civil court. The provisions of the Code of Civil Procedure executing the decree are made applicable by legal fiction recognised by virtue of Section 42 of the Act. In any case procedure of the Small Causes is adopted by the Controllers under the provisions of the Act wherein also in execution the provisions of the Code of Civil Procedure are applicable and as such law of limitation would be attracted. The question is when the limitation starts running. Once the limitation starts running then unless the statute comes to the rescue of a person the period would expire after the efflux of time.

13. Discussing certain authorities the Rent Tribunal held that the limitation started from the date of the grant of the permission and as such the execution application was well within time. The Tribunal dismissed the appeal. The High Court summarily rejected the second appeal.

14. The question before us is whether this execution was barred by limitation and secondly, whether there was a question of res judicata because a prior application for permission by the Slums Clearance Authority was rejected.

15. This particular point was considered by a learned single Judge of the Delhi High court in *Des Rai v. Noor Khan* (AIR 1985 Del 470 : (1985) 28 DLT 32 : (1985) 1 Ren CR 606), where the High Court held that under Article 136 of the Limitation Act of 1963 a decree was executable within 12 years from the date when it became executable; whether the decree when passed, was not enforceable no execution could be levied and hence period limitation would not commence. A decree of eviction passed under the Delhi and Ajmer Rent control Act, 1952 on February 19, 1960 according to the said decision became executable only on May 8, 1981 in the case when permission under the Slum Act to execute it was obtained and therefore the 12 years' period prescribed by Article 136, Limitation Act, 1963 to execute the decree was held to have commenced only on May 8, 1981 and not on February 19, 1960.

16. The High Court followed a Full Bench decision of the Allahabad High Court and a Division Bench decision of the Patna High Court. It was further held that there was no bar under Section 19 of the Slum Act to a second or subsequent application seeking permission to execute the order of eviction of tenant obtained under Section 13(1)(e) of the Delhi and Ajmer Rent Control Act, 1952, in view of the changed circumstances entitling grant of the permission being shown.

17. This decision negates the two principal contentions urged in this case on behalf of the appellant, namely there was no question of res judicata in granting subsequent permission under the Slum Act if charged circumstance so warranted and secondly limitation would start after permission was granted. But the Delhi High Court had no occasion to consider the effect of the decision of this Court in *Ravi Dutt v. Ratan Lal* ((1984) 2 SCR 614 : (1984) 2 SCC 75 : AIR 1984 SC 967) where it was held the relevant provision of the Delhi Rent Act for eviction on the ground of bona fide requirement belong in Chapter III-A of the said Act had overriding effect and the Slum Act was rendered inapplicable. If that is the position then no permission under Slum act was at all necessary in case of a decree for bona fide requirement. The said principle was reiterated in two previous

decisions. If that was so then the decree for eviction having been passed on October 15, 1960 and the application for execution being filed on or about September 25, 1979 was clearly barred by limitation.

18. But the basic question in the instant case as we have noted from the facts of the case is that the decree for eviction the Rent Act was passed in October 1960 and the appeal against the same was dismissed in October 1961 by the Tribunal. Thereafter an application made in May 1962 for permission under section 19 of the Slum Act as it then stood was dismissed in March 1963. Thereafter no action was taken up to 1978. When in 1978 action was initiated by filing the second application under the Slum Act, 12 years from the dismissal of the application under the Slum Act had passed and the decree had become barred. The decree had clearly become barred by limitation. Article 136 of the limitation Act, 1963 provides that a decree can be executed within 12 years from the date on which it became executable. Decree passed by the Rent Controller even if it was not executable and enforceable unless permission under the Slum Act had been taken, which as noticed before was not the position in law, the steps for such permission had become barred. Steps for filling the application under the Slum Act were not taken, on refusal of the first application within 12 years thereof. It is apparent therefrom that the execution of the decree of eviction which was passed on October 15, 1960 became time barred on October 14, 1963 under Article 182 of the Indian Limitation Act, 1908 as it stood at that time. Under Section 31(a) of the 1963 Limitation Act, the provisions of the 1963 Limitation Act would not be availed of in respect of an application for which the period of limitation had expired before the commencement of the 1963 Limitation Act, that is to say, January 1, 1964. But even if Article 136 of the Limitation Act, 1963 was attracted it had become barred after 12 years from the date of the decree i.e. October 15, 1960.

19. In the Bench decision the Calcutta High Court in *Lala Baijnath Prosad v. Nursingdas Guzrati* (AIR 1958 Cal 1, 8 : 61 Cal WN 494), Chakravartti, C. J. speaking for the Division Bench observed :

The right to enforce the decree, it appears to me, is one thing : the possibility or practicability of exercising the right is another. If by the terms of a decree, the decree-holder has become entitled to execute it immediately, an instant right to execute it has accrued to him contemporaneously with the passing of the decree. Even if he is prevented by some external circumstance from enforcing the decree for some time, the right as a right, is nevertheless a present right. And what is a present right is not merely the right declared by the decree by the right to enforce the decree, because if a decree declares certain rights in favour of a person and there is nothing in the decree itself by which they are declared with effect from a future date or which postpones the right to execution to some date in the future, there is no reason to say that a present right to enforce the decree does not accrue to the decree holder as soon as the decree is passed. It may be that, though entitled under the terms of the decree to enforce it immediately, he cannot in fact do so for some time by reason, say, of having to comply first with some procedural requirement, as in the present case, but that only means that it is not practicable for him yet to enforce the decree and not that a present right to enforce it has not accrued.

20. The aforesaid principles, in our opinion, would be applicable to the facts and circumstances of the present case. It has been emphasised that there was no impediment or disability in the way of the respondent in applying for permission from the Competent Authority under the Slum Act. It was, however, urged that unless the circumstances changed the permission under the slum Act could not have been granted but for the off chance of circumstances changing and thereby giving a right to apply for permission under the Slum Act, decree cannot be kept in suspended animation. As we

have noted before after the refusal of the application in March 1963 until April 1978 there were no steps taken. This feature and this aspect, in our opinion, distinguishes this case from the other cases, quite apart from the fact that in the light of the decision of this Court in Ravi Dutt v. Ratan Lal ((1984) 2 SCR 614 : (1984) 2 SCC 75 : AIR 1984 SC 967) there was no requirement of permission under the Slum Act and as such no impediment in putting the decree dated October 15, 1960 into execution. It has further to be borne in mind that respondent had filed a second application for permission after lapse of more than 15 years; there was, in any event, no legal impediment or legal bar which prevented the respondent from making the application for permission to the Competent Authority under the Slum Act before. It was argued that the respondent did not apply because there was no change of circumstances which would entitle the respondent to obtain permission. It was argued that the second application was made in 1978 and at that time the law under the Slum Act had altered as we have noticed. It appears to us that in this case in any event no permission was required to execute the decree. Therefore the second application was unnecessary. In that view of the matter in this case it is not necessary to examine whether a second application lay or not. We are inclined to the view that an application might lie if it was within the period of limitation. We need not decide in this case the question of res judicata.

21. It is clear that the order of eviction passed by the Rent Controller as confirmed by the Tribunal in 1961 had become obsolete in 1978 when the second attempt to execute the same was made.

22. In that view of the matter we are of the opinion that it was not just, equitable and in good conscience to allow such stale claims to be effectuated and that would be contrary to the principles of the Limitation Act, 1963 as well as Indian Limitation Act, 1908.

23. In the premises the order dismissing the appeal from the Rent Tribunal must be set aside and the application made for execution must be dismissed. It must be held that the claim to execute the order of eviction of the Rent Controller in this case dated October 15, 1960 had become time barred. The appeal is allowed and the judgment and order of the High Court are set aside. In the facts and circumstances of the case, however, there will be no order as to costs.

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