

Parvatibai Subhanrao Nalawade

Vs

Anwarali Hasanali

Civil Appeal Nos.5061 and 5062 of 1991

(L. M. Sharma, J. S. Verma, S. C. Agrawal JJ)

20.12.1991

JUDGEMENT

SHARMA, J.:-

1. Special leave is granted.

2. The appellant is the daughter and heir of Shripat Tukaram Jadhav, since deceased, who was in possession as a tenant of a portion of a building belonging to the respondent No. 3. The respondent filed a suit for eviction of Shripat on the ground that he needed the building for demolition and for reconstruction of a new one, which was disposed of by a compromise between the parties. According to the consent decree the tenant had to vacate the premises, and the respondent-landlord undertook to complete the reconstruction of the new building with a reasonable period and "to give possession of an identical (equal) area as in the original premises to the defendant, on a monthly rental and the defendant will have a right to an identical area in the new building". The decree further stated thus:-

"The right of the defendant to an identical area is an essential condition to this compromise".

Accordingly the tenant vacated the premises in 1966 and the respondent No. 3 proceeded with the erection of the new building. However, the essential term of the compromise, entitling the tenant to the equivalent area therein was not respected by the respondent in spite of service of a notice served in this regard in November, 1967. Ultimately the tenant made an application for restoration of possession which was dismissed by the trial Court on the ground that the same was not maintainable. The tenant took the matter to the first appellate Court and thereafter to the High Court in Civil Application No. 1819/ 70; and while it was pending he died, and his heirs were substituted.

3. It was seriously contended on behalf of the respondent that the decree was not executable which was overruled by the High Court by its judgment dated 17-7-1975. However, it was further held that the appropriate remedy of the tenant was by way of execution of the consent decree, and the case was accordingly remanded to the trial Court with a direction that the proceedings initiated by the tenant would be treated as execution proceeding. The matter, thus, once more came before the first Court for the purpose of execution of the consent decree, in the proceeding which was renumbered as Execution Case No. 1591/75.

4. In the meantime, the respondent No. 3 inducted the present respondents 1 and 2 in the new building who resisted the delivery of possession, necessitating the appellant to file an application

under Order 21, Rule 97 of the Code of Civil Procedure, out of which the present appeal arises and which was registered as miscellaneous application No. 696/ 78.

5. The application was opposed by the landlord judgment-debtor as well as the obstructionists on the basis of a large number of frivolous grounds, including the plea that the decree being vague was not executable, The small cause court rejected the objections correctly, pointing out to the decision of the High Court in Civil Application No. 1819/70 and holding that neither the landlord nor his nominees were entitled to reagitate the questions finally settled by the High Court in favour of the appellant.

6. The obstructionists, however, did not give up and carried the matter in appeal before the District Judge, Pune, once more raising several technical grounds against the maintainability of the proceeding which were rejected by the District Judge. Two writ petitions, thereafter, were filed by the obstructionists and another person, all claiming to have been inducted by the respondent No. 3 in the new building as tenants. The High Court dismissed all the grounds raised in the writ petitions in view of the earlier findings of the High Court in Civil Application No. 1819/70, except one, namely, whether the decree could be executed by ejecting the writ petitioners from the areas in their possession.

7. After referring to the report of the Commissioner, appointed by the executing Court, and other materials the High Court observed that the available evidence on the record did not positively establish that the tenements in possession of the writ petitioners were comparable to the premises in possession of the tenant in the old building. The Court also mentioned the offer made by the landlord respondent No. 3 which was not acceptable to the present appellant and expressed its displeasure on her attitude. Proceeding further, the learned Judge attempted to analyse the situation for finding out the comparative hardship to the parties and came to the conclusion that the writ petitioners deserved sympathy and there was no justification for the appellant to reject the offer made by the respondent No. 3 Bank. On these considerations the rule was made absolute against the appellant by the impugned judgment.

8. We have heard the learned counsel for the parties and have considered the relevant Circumstances, and in our opinion, the High Court was not justified either in entertaining the writ petitions or in deciding the merits of the dispute against the appellant. In pursuance of a solemn compromise reached by the tenant (appellant's father) and the landlord-respondent No. 3 the possession of the premises was handed over to the landlord in 1966 on the express stipulations that on the construction of the new building the tenant would get an identical area therein. The fresh construction was completed in 1967 and instead of honouring the pledge given by it in the form of an "undertaking" the respondent Bank inducted the writ petitioners therein and did not make any offer to the tenant or after his death to his heir until the matter reached the High Court on the second occasion and the writ petitions were being argued in 1990. We do not, therefore, think that there is any conceivable reason to condemn the appellant for her insistence for the benefits under the consent decree or for any sympathy with the landlord-Bank or the writ petitioners before the High Court who took advantage of the situation.

9. So far the merits of the matter are concerned, it must be clearly understood that the right of the appellant under the consent decree cannot be defeated in view of the final determination by the High Court on the earlier occasion in Civil Application No. 1819/ 70 and the respondent-Bank must be held liable for making its undertaking good as well as for any suitable compensation for the gross delay of more than two decades since 1967.

10. As to the identification of the particular area in the new building to be allotted to the appellant, the parties have led some evidence, but since we have not examined the same, we cannot take a final decision on merits. The judgment of the learned District Judge appears to be sketchy so far this aspect is concerned, and we, in the circumstances, remit the matter to the executing Court for reconsideration after permitting the parties to give any additional evidence, they desire to offer without delaying the proceeding and to execute the decree by identifying the premises and giving its possession to the appellant. Before closing this judgment we would like to emphasise that in cases relating to immovable properties which are governed by the ordinary civil law the High Court should not exercise its special jurisdiction under the Constitution unless the circumstances are exceptional. This aspect has been discussed by this Court earlier on several occasions.

11. In the result the appeals are allowed and the case is remitted to the executing Court for proceeding with the case expeditiously as indicated earlier. The cost of these appeals assessed at Rs. 5,000/- shall be paid by the respondent-Bank to the appellant. Appeals allowed.

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