Bank of Baroda

Vs

R. M. Patwa and Another

Civil Appeal No. 2476 of 1996

(K. Ramaswamy, G.B. Pattanaik JJ)

12.01.1996

JUDGMENT

1. Leave granted.

2. It is rather very strange and surprising that the High Court has hijacked the execution proceedings; converted the execution proceedings into case and counter cases and granted decree/order even between strangers to the execution proceedings in its revisional jurisdiction under Section 115 of the CPC. The facts are very simple but the learned Judge has made them complicated ones. The appellant-Bank had obtained a money decree against the first respondent R.M. Patwa, Proprietor, M/s. Indian Crude Corporation, Indore and another for a sum of Rs. 55,000/- with interest at 9% per annum and future interest by decree dated April 6, 1981. The appellant filed an execution application case No. 7823 in Civil Suit No. 77-B/76-81. Therein the judgment-debtor made an application under Section 151, CPC on March 4, 1986 with a request that amounts lying to the credit of the second respondent G.K. Kakkani, Proprietor, M/s. Oriental Traders lying with the appellant-decree-holder, may be adjusted towards the decree debt. It is now clear from the facts that there is a dispute between the appellants and Kakkani and a writ petition filed under Article 226 in Bombay High Court for recovery of the amount was dismissed; SLP was also dismissed by this Court. The Additional District Judge by his order dated May 2, 1992 directed adjustment as prayed for. When the appellant carried the matter in revision, the High Court in Civil Revision No. 297/92, dated 10-5-1995 has given in paragraph 11 certain directions in a confused fumbling way and ultimately disposed of the revision in the light of the directions contained therein. On an analysis of the directions they would run like thus :

> (i) the amount received from the Prothonotary, High Court of Bombay with interest payable thereon computable as on March 31, 1986 and lying in the account of the second respondent Kakkani be adjusted to the decree debt due and payable by the first respondent;
>
> (ii) the amount computed was on that date would be Rs. 5,37,017-16 ps. and after adjustment of the said amount, the appellant was directed to pay over the balance amount to Kakkani with interest at 19% till the date of the payment.
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> (iii) the judgment-debtor R.M. Patwa was directed to reimburse the amount adjusted by the Bank to the second respondent within three months thereafter. The Bank was directed to forego the interest payable on the decree amount or any amount thereof.

Calling these directions in question, this appeal has been filed.

3. It has been contended for the appellant-Bank that the High Court has travelled beyond the revisional jurisdiction under Section 115, CPC and granted decrees and set off. He contended that in money decree recoverable from Patwa, admittedly, the High Court has converted this money decree into a decree in favour of the second respondent which is impermissible under the law.

4. Shri H.N. Salve, the learned senior counsel appearing for the second respondent contended that the Bank being a nationalised Bank and having had an account of the second respondent with it, is bound under law to either pay back the amount to him or adjust the amount payable towards the decree debt of the first respondent. Admittedly, there was some amount lying to the credit of the second respondent with the Bank. The said amount ought to be either given to the second respondent or adjusted to the decree debt of the first respondent in terms of the undertaking given by the second respondent. The High Court, therefore, had done justice to the parties and that there is no illegality in the action.

5. Having considered the respective contentions, the only question for consideration is whether the High Court or the executing Court could go into these controversies and direct adjustment against the will of the decree-holder. It is settled law that the decree-holder is entitled to proceed in execution against the judgment-debtor in the manner prescribed under Order 21 of the CPC. In execution proceedings the judgment-debtor filed an application under Section 151 to adjust the amounts lying in the account of Kakkani towards the debt payable by the judgment-debtor. It is now clear from the facts that there is an acute dispute and difference between the entitlements or liabilities between Kakkani, a stranger to the decree, and the Bank. Those liabilities and adjustments cannot be adjudicated in the execution proceedings between the appellant and the judgment-debtor. A clever device was adopted to overreach the appellant against the will of the decree-holder. The third party rights cannot be projected for determination in an execution and directions given on that basis as ordered by the High Court, are unthinkable let alone legal. Therefore, the High Court has not only far exceeded its revisional power under S. 115, CPC but also converted these proceedings into claims and counter-claims in execution, to which the second respondent is not a party and which even first respondent is not entitled to seek for. The learned single Judge has given directions de hor the execution. The High Court went ahead to direct the appellant to forego interest under a decree which came to exist first. The High Court has acted against all notions of law in execution. Accordingly, we are of the view that the execution Court as well as the High Court in giving directions have committed manifest and gravest error of law in the process of execution levied under Order 21, CPC and given directions. The orders are, therefore, set aside. The appellant is at liberty to proceed with the execution in accordance with law. If there are any disputes between the second respondent and the Bank, it would be open to the parties to have their rights agitated, if available in accordance with law. The learned Judge is directed to complete the execution as expeditiously as possible since it is a long pending case.

6. The appeal is accordingly allowed with costs throughout. Appeal allowed.