SUPREME COURT OF INDIA

Rekha Mukherjee

Vs.

Ashish Kumar Das

C.A.No.9131 of 2003

(V. N. Khare, C.J.I., S. B. Sinha and Dr. A. R. Lakshmanan, JJ.)

18.11.2003

JUDGEMENT

S. B. SINHA, J.:-

1. Leave granted.

2. Interpretation of a consent order passed by this Court falls for consideration in this appeal which arises out of a judgment and order dated 11-6-2003 passed by the High Court of Calcutta in CO No. 1147 of 2003.

3. The appellant herein is the landlord. The respondents were inducted as tenants. A suit for eviction was filed by the appellant against the father of the respondents in the Court of 3rd Munsiff, Alipore which was marked as Title Suit No. 105 of 1975. The said suit was transferred to 1st Munsif and renumbered as Title Suit No. 412 of 1977. The present respondents were substituted in place of the

original defendant on his death. The respondents herein, however, claimed possession in respect of the suit premises purported to be in furtherance of part performance of contract in terms of an agreement for sale in relation whereto they filed a suit being Title Suit No. 49 of 1990 for specific performance thereof in the Court of 9th Assistant District Judge, Alipore. The aforementioned Title Suit No. 412 of 1977 was decreed and for execution thereof the appellant filed an execution case before the 1st Munsif, Alipore which was marked as Title Execution Case No. 46 of 1991. In the meanwhile, the respondents preferred an appeal against the said judgment and decree passed in Title Suit No. 412 of 1977 which was allowed by the 8th Additional District Judge, Alipore on or about 24-2-1992 in Title Appeal No. 309 of 1991. A second appeal there against was preferred by the appellant before the Calcutta High Court which was marked as Second Appeal No. 425 of 1992 and by a judgment and decree dated 18-12-1998 the second appeal was allowed as a result whereof the decree for eviction was restored.

4. The matter came up in appeal before this Court by way of Special leave petition. The said appeal was dismissed by an order dated 18-10-2000 wherein the following agreement between the parties was recorded :

"Mr. Bhaskar Gupta, learned senior counsel appearing for the appellants and Mr. Shantanu Mukherjee, learned counsel for the respondent agreed to the following order to be passed by this Court :

Firstly, the decree passed by the High Court is to be affirmed. Secondly, the respondent shall file an undertaking in this Court that she would not execute the decree passed in Suit No. 412 of 1977 till the decision of Title Suit No. 49/90.

In view of agreed statement by counsel for the parties, the decree of the High Court is affirmed in terms of the agreement between the parties without prejudice of rights and contentions of the parties in Suit No. 49/90. The respondent shall file an undertaking within a period of three weeks from today. The trial Court may make an effort to decide the suit expeditiously, if possible, within a period of six months. Learned counsel for the parties have given assurance that they would not take unnecessary adjournment."

5. It is not in dispute that the aforementioned suit for specific performance being Title Suit No. 49 of 1990 was dismissed on or about 20-12-2001, whereafter the appellant filed an application on about 11-2-2002 before the Executing Court for proceedings with execution. An application filed by the respondents for review of the decree dismiss ing the said Title Suit No. 49 of 1990, however, was allowed by the 9th Senior Civil Judge by an order dated 15-7-2002 holding that necessary order regarding its reopening would be passed after hearing both sides on the question whether earnest money should be directed to be refunded. The relevant portion of the aforementioned order is as follows :

"Accordingly, I arrive at the conclusion that there has been an error of omission while passing the impugned Order No. 179, dated 20-12-2001 of T.S. 49/90 by omitting to spell out whether earnest money should be refunded or forfeited. This is an error on the face of the record, which can be rectified by passing necessary order in this regard after hearing both sides. So review lies. Therefore, I hold that the application under Order 47, Rule 1 of the C.P.C. is liable to be allowed.

Court-fee paid is correct.

Hence, it is,

Ordered

That Misc. Case No. 1/02 is allowed on contest without cost.

Necessary order will be passed in T.S. 49/90 regarding reopening of Order No. 179, dated 20-12-2001 of that suit in the light of this judgment/order."

6. An application thereafter was filed for stay of the execution proceedings by the respondents which was rejected. Correctness of the said order was questioned before the High Court and by an order dated 7-4-2003, it directed the Executing Court to decide the application for stay upon assigning sufficient reasons. The matter, however, stood adjourned from time to time. On or about 6-5-2003, the Executing Court passed the following order :

"It is the admitted position that the decree-holder filed an undertaking before the Hon'ble Supreme Court to the effect that she would not execute the decree passed in T.S. 412/77 till the decision of T.S. 49/90. It is further admitted that T.S. 49/90 was dismissed by Ld. Civil Judge (Sr. Division) 9th Court, Alipore. The documents on record reveal that the said suit was subsequently restored and has presently been stayed by the Hon'ble High Court vide F.M.A.T. 2387/02 with C.A. No. 7352/02. The d.hr. has urged that the undertaking before the Hon'ble Supreme Court has lost its force and is no longer effective as T.S. 49/90 and as such, there is no bar to proceed with the instant case. The j.drs. on the other hand, have contended that on restoration of T.S. 49/90, the said undertaking has again revived and the instant case cannot thus be proceeded with.

In my considered view, the said undertaking was given by the D.hrs. before the Hon'ble Apex Court and not before this Court. Therefore, this Court is not in a position to determine whether the undertaking is still in force or has ceased to exist. Determination regarding this point should in my

view, be sought for from the Hon'ble Apex Court before whom the undertaking was given. Unless this point is clarified, the instant case cannot be proceeded with by this Court.

In the circumstances, I am inclined to hold that the instant petn. for adjournment should be allowed and the parties are given liberty to take necessary steps in order to clarify whether the undertaking given before the Hon'ble Supreme Court is still operative or not."

7. Aggrieved by and dissatisfied therewith an application under Article 227 of the Constitution of India was filed by the appellant herein. By reason of the impugned judgment the High Court opined that as Title Suit No. 49 of 1990 has not yet been finally disposed of, the undertaking given by the appellant herein before this Court still holds good opining :

". . . . . .Admittedly, the Title Suit No. 49 of 1990 has not yet been finally disposed of. The submission that it was dismissed and thereafter consequent to an application for review, the prayer for review has partly been allowed and the suit has been reopened, is enough to show that the Title Suit No. 49 of 1990 is still pending. Moreover, the settled position of law is that with the disposal of the suit by a Court of contempt (sic competent) jurisdiction, what comes into being is res judicata and once the decree is appealed against or a review is applied for it becomes res sub judice. If any authority is needed reference can be made to the case of S.P. Mishra v. Balouji, reported in AIR 1970 SC 809, which was a case decided by the Supreme Court. In this case in hand, position is much better because the review has partly been allowed and the suit has been reopened."

8. Mr. Santanu Mukherjee, learned counsel appearing on behalf of the appellant, would argue that having regard to the fact that the aforementioned Title Suit No. 49 of 1990 was dismissed, the undertaking given by the appellant lost its efficacy. According to the learned counsel, an undertaking being in the nature of injunction, merges with the final order and does not remain operative thereafter.

9. Mr. D. P. Mukherjee, learned counsel appearing on behalf of the respondents, on the other hand, would submit that the execution proceedings should remain stayed having regard to the unequivocal undertaking given before this Court by the appellant in this behalf. Mr. Mukherjee would contend that the respondents have preferred a regular substantive appeal against the judgment and decree dated 20-12-2001 passed by the 9th Civil Judge, Senior Division in Title Suit No. 49 of 1990 irrespective of the steps taken for review of the said order and in that view of the matter the decision therein has not attained finality.

10. The short question which, thus, arises for consideration in this appeal is as to whether the undertaking of the appellant survives. The undertaking of the appellant was to the effect that she would not execute the decree passed in the aforementioned suit till the decision of Title Suit No. 49 of 1990. The said statement must be read together with the operative portion of the order which

would clearly go to show that the appellant had given the aforementioned undertaking that the eviction decree would not be executed till the decision of the said suit for specific performance of contract and not thereafter. This Court having regard to the aforementioned undertaking made an observation that the trial Court should make an effort to decide the suit expeditiously and preferably within a period of six months, in relation whereto the counsel for the parties had given an assurance that they would not take any unnecessary adjournments. It is now a well-settled principle of law that a judgment should not be read as a statute.

11. In Padma Sundara Rao (Dead) and others v. State of T. N. and others ((2002) 3 SCC 533), it is stated : AIR 2002 SC 1334 : (2002 AIR SCW 1156, 8A

". . . . . There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board ((1972) 2 WLR 537 : 1972 AC 877 (HL) (Sub nom British Railways Board v. Herrington, (1972) 1 All ER 749 (HL)). Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

(See also Haryana Financial Corporation and another v. Jagadamba Oil Mills and another ((2002) 3 SCC 496). AIR 2002 SC 834 : (2002 AIR SCW 500)

12. In General Electric Co. v. Renusagar Power Co. ((1987) 4 SCC 137), it was held :

"As often enough pointed out by us, words and expressions used in a judgment are not to be construed in the same manner as statutes or as words and expressions defined in statutes. We do not have any doubt that when the words "adjudication of the merits of the controversy in the suit" were used by this Court in State of U.P. v. Janki Saran Kailash Chandra ((1974) 1 SCR 31 : (1973) 2 SCC 96 : AIR 1973 SC 2071), the words were not used to take in every adjudication which brought to an end the proceeding before the Court in whatever manner but were meant to cover only such adjudication as touched upon the real dispute between the parties which gave rise to the action. Objections to adjudication of the disputes between the parties, on whatever ground are in truth not aids to the progress of the suit but hurdles to such progress. Adjudication of such objections cannot be termed as adjudication of the merits of the controversy in the suit. As we said earlier, a broad view has to be taken of the principles involved and narrow and technical interpretation which tends to defeat the object of the legislation must be avoided."

13. In Rajeswar Prasad Mishra v. The State of West Bengal and another, reported in AIR 1965 SC 1887, it was held :

"Article 141 empowers the Supreme Court to declare the law and enact it. Hence the observation of

the Supreme Court should not be read as statutory enactments. It is also well known that ratio of a decision is the reasons assigned therein."

(See also M/s. Amar Nath Om Prakash and others v. State of Punjab and others (1985 (1) SCC 345) and Hameed Joharan (Dead) and others v. Abdul Salam (Dead) by L.Rs. and others ((2001) 7 SCC 573)) AIR 1985 SC 218, AIR 2001 SC 3404 : (2001 AIR SCW 3261)

14. The said undertaking was given by the appellant despite the fact that this Court did not find any merit in the special leave petition, filed by the respondents herein against the judgment and decree passed by the High Court of Calcutta in the said Second Appeal No. 425 of 1992.

15. We cannot shut our eyes to the ground reality that even the Courts including this Court allow sufficient time to the tenant to vacate the premises. In the instant case, an undertaking was given by the landlord to the effect that the decree shall not be executed till the judgment of the lis relating to the specific performance of agreement. The expression 'decision' in the aforementioned situation, in our opinion, cannot be held to be a decision till it attains finality. Such an undertaking was given for a specific purpose meaning thereby determination of the lis by the Court in the aforementioned Title Suit No. 49 of 1990 and not beyond thereto. For the purpose of interpretation of such an undertaking the golden rule of literal meaning shall be applied. Application of doctrine of merger or for that matter the principle that appeal is a continuation of the suit will have no application.

16. An undertaking of this nature furthermore must be construed in favour of the person giving such undertaking. It should not be stretched too far. A party giving an undertaking is bound thereby but by reason thereof, the same cannot be given a meaning whereby the scope and extent thereof is enlarged.

17. Had the intention of the parties been that 'decision in the suit' would mean a 'final decision' therein, which may include final determination of the dispute up to this Court, it could have been stated so specifically. In our opinion, in such an event, a strained meaning will have to be put which was not the intention of the appellant. If that was the intention of the appellant, the question of this Court's making observations to facilitate early disposal of the suit would lose all relevance.

18. The Title Suit is pending decision only for a limited purpose, namely, for refund of the earnest money. The substantive prayer of the respondents for review of the judgment and decree passed by the trial Court, therefore, has not been accepted. The Court has not granted a decree for specific performance of the contract. The question of eviction of the respondents in execution of the decree passed in Title Suit No. 412 of 1977 had only a direct relationship with the right of the respondents to continue to possess the tenanted premises in furtherance of their plea of part performance of the

terms and conditions of the agreement for sale. Such a right claimed by the respondents herein to continue to posses the same on the basis of her independent right in terms of Section 53 of the Transfer of Property Act had been negatived by the Court. The respondents cannot resist their eviction pursuant to or in furtherance of the decree for eviction passed against them in execution proceedings thereof.

19. We, for the reasons aforementioned, are of the opinion that the impugned judgment cannot be sustained. It is set aside accordingly. The appeal is allowed. No costs.

Appeal allowed.