

SUPREME COURT OF INDIA

Yatinder Kumar Aggarwal

Vs.

Mukund Swarup

C.A.No.8398/2013

(A.K.Sikri and S.Abdul Nazeer,JJ.,)

22.01.2019

JUDGMENT

A.K.Sikri,J.,

1. To state the facts in brief, a civil suit was filed by Hari Kishan Das (hereinafter referred to as the "plaintiff") way back in the year 1955. It was a money suit in which decree in the sum of Rs. 11,666.66 p. was passed in favour of the plaintiff and against M/s. Diwan Kripa Ram Radha Kishan (hereinafter referred to as the "defendant"). This decree was upheld by the District Judge and by the High Court of Allahabad in Second Appeal. The problem which arose thereafter is in the execution proceedings. Execution Case No. 29 of 1962 was filed by the plaintiff/decree holder as the decree was not fully discharged. Auction notice was published on 16.04.1964. At that stage the defendant/Judgment Debtor filed an application under Order XXI Rule 83 of the Civil Procedure Code, 1908 for postponement of sale pleading that he would raise the decretal amount and pay the same to the plaintiff. Ultimately, on 08.10.1964 the parties came to an understanding on the basis of which statement was recorded by the Executing Court to the effect that four months' time be given to the defendant/Judgment Debtor to deposit the entire amount. It was also agreed that if the amount was not deposited in four months, the property would be sold without proclamation. Though the defendant/Judgment Debtor paid certain amount but could not make the full payment as per his statement. He filed an application for extension in which certain orders were passed. However, ultimately the property was sold and purchased by the son of the plaintiff for a sum of Rs. 13,700/-. Objections against the same were filed stating certain irregularities in the conduct of the auction which were dismissed. Appeal there against was also dismissed by the High Court. That order was challenged in C.A. No. 8398 of 2013 which was dismissed by this Court vide judgment dated 20.09.2013. In the said judgment it is, inter alia, noted that the decretal amount was admittedly not paid by the defendant/Judgment Debtor which led to the dismissal of the Execution Second Appeal by the High Court. The instant review petition is preferred by the defendant/Judgment Debtor ('the appellant in the said appeal') seeking review of the said judgment dated 20.09.2013. It may also be noted at this stage that during the pendency of the Special Leave Petition/Appeal interim orders were passed restraining the defendant/Judgment Debtor from disposing of the

property in question. However, as per the plaintiff in violation of those orders the defendant/Judgment Debtor sold the property to certain persons. Because of this reason, contempt petition is preferred by the plaintiff. Arguments were heard in these two cases which are disposed of by this common order. Adverting to the review petition, in the first instance, the case set up by the defendant/review petitioner is that this Court committed a factual error in its judgment dated 20.09.2013 by recording that the entire decretal amount admittedly was not paid by the defendant/Judgment Debtor because of which execution second appeal was dismissed by the High Court. It is submitted by Mr. D.K. Garg, learned counsel appearing on behalf of the defendant/Judgment Debtor, that the entire amount stood paid and the decree had been satisfied. In order to buttress his submission learned counsel has referred to the order dated 17.02.1971 passed by the District Judge, Saharanpur in Misc. Appeal No. 116 of 1970. By this order the District Judge, Saharanpur allowed the appeal of the defendant/Judgment Debtor specifically holding that the amount as directed by the High Court had rightly been deposited through the bank drafts and that amount of Rs. 13,800/- which was deposited would be deemed to have complied with the order of the High Court dated 11.05.1970. It is also pointed out that against the said order the plaintiff/decree holder had filed an appeal which was dismissed by the High Court on 15.10.2001. According to Mr. Garg the defendant/Judgment Debtor, in fact, paid the amount in excess. Along with the review petition, the defendant/Judgment Debtor has filed various challans by which the amount was deposited in the executing court from time to time. The details of which are as under.

Amount due as mentioned in the Proclamation of Sale	Rs.22,843.70															
Amounted deposited by the petitioner pursuant to the order of the Executing Court dated 08.10.1964. The order was a consent order by which 4 months time was given to the Judgment Debtor to deposit the entire amount with the executing court. The amounts deposited by the petitioner in 4 months is as under:-	Rs.9,000.00															
<table> <tr> <td>24.10.1964</td> <td>:</td> <td>Rs. 3,000/-</td> </tr> <tr> <td>11.11.1964</td> <td>:</td> <td>Rs. 2,000/-</td> </tr> <tr> <td>11.12.1964</td> <td>:</td> <td>Rs. 2,000/-</td> </tr> <tr> <td>09.01.1965</td> <td>:</td> <td>Rs. 2,000/-</td> </tr> </table>	24.10.1964	:	Rs. 3,000/-	11.11.1964	:	Rs. 2,000/-	11.12.1964	:	Rs. 2,000/-	09.01.1965	:	Rs. 2,000/-				
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09.01.1965	:	Rs. 2,000/-														
Thus, before the date as agreed (7.2.1965) the respondent deposited only Rs. 9,000/-																
Further amount deposited by the Judgment Debtor before the date of auction:-	Rs. 10,000/-															
<table> <tr> <td>23.02.1965</td> <td>:</td> <td>Rs. 2,000/-</td> </tr> <tr> <td>12.03.1965</td> <td>:</td> <td>Rs. 2,000/-</td> </tr> <tr> <td>15.04.1965</td> <td>:</td> <td>Rs. 2,000/-</td> </tr> <tr> <td>20.07.1965</td> <td>:</td> <td>Rs. 2,000/-</td> </tr> <tr> <td>16.08.1965</td> <td>:</td> <td>Rs. 2,000/-</td> </tr> </table>	23.02.1965	:	Rs. 2,000/-	12.03.1965	:	Rs. 2,000/-	15.04.1965	:	Rs. 2,000/-	20.07.1965	:	Rs. 2,000/-	16.08.1965	:	Rs. 2,000/-	
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20.07.1965	:	Rs. 2,000/-														
16.08.1965	:	Rs. 2,000/-														

Amount outstanding as on 29.10.1965	Rs.3,843.70
A further amount claimed for the first time in the review petition to be deposited on 02.03.1965	Rs. 1,386.00
Amount short deposited	Rs.2,457.70
Amount claimed to have been deposited on 13.11.1965 (i.e. after the auction):	Rs.1,720.00
Amount still due	Rs.737.70

It is, thus, pointed out by Mr. Garg that as against the decretal amount Rs. 11,666.66 p. the defendant/judgment debtor had already paid a sum of Rs. 35,906/-. Mr. Sushil Kumar Jain, learned senior counsel appearing for the respondent, in the review petition could not dispute the fact that payments were made by the defendant/judgment debtor from time to time as recorded above. These dates show that the defendant/judgment debtor had been making payments, though in installments. His only submission was that the order of the District Judge is the subject matter of the appeal pending in the High Court. The District Judge, Saharanpur has categorically recorded that the entire decree stands satisfied. These facts were not noted while giving the judgment dated 20.09.2013, which material alters the outcome of the case. As on today the position as per the order of the District Judge is that the entire decree stands satisfied. Even if the appeal of the plaintiff succeeds and the High Court finds that some more amount is due that may not be substantial amount, if at all and, therefore, the defendant/judgment debtor can always be directed to pay the amount. In these circumstances, it would not be feasible to sell the property of the defendant/judgment debtor. We, thus, recall our order dated 20.09.2013 and allow the Civil Appeal No. 8398 of 2013 thereby setting aside the order of sale of the property in question. Coming to the contempt petition, no doubt the contemnors have violated the orders of this Court by selling the property. However, since the properties are not subject matter of sale now, we are inclined to take a lenient view of the contempt committed. The contemnors shall pay a sum of Rs. 50,000/- as compensation to the plaintiff/decreed holder. This amount shall be paid within four weeks. The contempt petition as well as the review petition stand disposed of in the aforesaid manner.