SUPREME COURT OF INDIA

Sir Sobha Singh and Sons Pvt.Ltd.

Vs.

Shashi Mohan Kapur

C.A.No.5534 of 2019

(Abhay Manohar Sapre and Dinesh Maheshwari,JJ.,)

15.07.2019

JUDGMENT

Abhay Manohar Sapre,J.,

SLP(C) No.3053 of 2019

1. Leave granted.

2. This appeal is filed against the final judgment and order dated 31.10.2018 passed by the High Court of Delhi at New Delhi in Ex.F.A. No.42 of 2018 whereby the High Court allowed the appeal filed by the respondent herein and set aside the order dated 22.10.2018 passed by the ADJ-02 & Waqf Tribunal, New Delhi District, New Delhi in Execution No.5665 of 2016.

3. A few facts need mention hereinbelow for the disposal of this appeal, which involves a short point.

4. The appellant is the plaintiff/decree holder and the respondent is the defendant/judgment debtor.

5. The dispute arises out of the execution proceedings and it emanates from Civil Suit No. 369/2009 (new No.675/2009) decided on 01.06.2012.

6. The appellant is the landlord of a Flat-G-81, IInd floor along with one Servant Quarter J-3-62, IIIrd floor situated at Sujan Singh Park, New Delhi (hereinafter referred to as "suit house").

7. The appellant let out the suit house to the father of the original respondent-Late Mr. R.L. Kapur as back as in 1959. The appellant, however, determined the tenancy by serving a quit notice to Mr. R.L. Kapur on 21.12.2004. Mr. R.L. Kapur died on 13.07.2007 leaving behind the respondent as his legal representative.

8. The appellant served another quit notice dated 16.01.2009 to the respondent and called upon him to vacate the suit house. Since the respondent failed to vacate the suit house, the appellant was constrained to file Civil Suit in 2009 (Old No.369/2009 new number 675/2009) against the respondent in the Court of ADJ for his eviction from the suit house and the mesne profits.

9. The respondent, after entering his appearance in the suit, did not contest it and compromised the matter with the appellant. It was agreed that the respondent (tenant) would hand over the vacant possession of the suit house on or before 31.05.2016 to the appellant; Second, the respondent would pay a sum of Rs.5,000/- per month towards user charges w.e.f. 01.06.2012 till the date of handing over of the suit house to the appellant; and third, the respondent would not sublet or create any third party rights in the suit house.

10. The Trial Court recorded the statement of the parties and accordingly disposed of the civil suit in terms of the aforementioned compromise by its judgment dated 01.06.2012 which reads as under:

> "With judicial intervention, the dispute between the parties has been amicably settled. It is agreed that defendant shall vacate and hand over the vacant and peaceful possession of the suit property, i.e., Flat No.G-81, IInd floor and servant quarter No.J- 3-62, IIIrd floor, Sujan Singh Park, New Delhi, as shown in the site plans already exhibited as Ex.PW1/14 and Ex.PW 1/15, to the plaintiff on or before 31.05.2016. Defendant also undertakes to pay the user charges of the suit property at the rate of Rs.5000/- per month w.e.f. 01.06.2012 to the plaintiff regularly till the date of handing over of the suit property to the plaintiff. Defendant also undertakes not to sublet or create any third party interest in the suit property.
>
> It is prayed that the case may be disposed off as compromised. Statements of Brig. Gurbax Singh and Mr. Shashi Mohan Kapur have been separately recorded and they have been identified by their respective counsel. Heard Perused. Considered. It appears that the statements have been made voluntarily and are accepted. Both the sides shall remain bound by their respective statements. In view of the submissions made as well as the statements of both the sides, the case is hereby disposed off as compromised. Attested copies of the order be given to both the sides, dasti, as requested. After completion of the formalities, file be consigned to record room."

11. On 27.05.2016, the respondent filed an application under Section 148 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code") and prayed therein for extension of time to vacate the suit house. The extension to vacate the suit house was sought on medical grounds.

12. By order dated 09.06.2016, the Trial Court allowed the said application and granted time to the respondent till 15.07.2016 to vacate the suit house. The respondent was also directed to clear the arrears of rent.

13. Instead of vacating the suit house on 15.07.2016, the respondent filed another application on 18.07.2016 and further sought time to vacate the suit house. The Trial Court, by order dated 08.08.2016, dismissed this application and declined to extend the time to vacate the suit house. As a result of the dismissal of this application, the respondent was under a legal obligation to vacate the suit house immediately.

14. Since the respondent failed to vacate the suit house, the appellant was constrained to file Execution Petition (5655/2016) in the Executing Court for execution of the consent decree dated 01.06.2012 against the respondent for obtaining vacant possession of the suit house.

15. The Executing Court, by order dated 30.09.2016, issued a warrant of possession against the respondent/Judgment debtor in respect of suit house. Since the respondent obstructed the execution of decree, the appellant applied to the Executing Court for providing him the police assistance for obtaining possession of the suit house from the respondent. In the meantime, the Judgment debtor died leaving behind the present respondent as legal representative of the original tenant.

16. On 18.10.2016 and 23.07.2018, the respondent herein filed four applications. One was under Order 47 read with Sections 114 and 151 of the Code for review of the order; Second was under Sections 47 & 151 read with Order 21 Rules 11(2) and 26 of the Code; Third was under Order 47 read with Sections 114 and 151 of the Code; and Fourth was under Section 151 of the Code. One application was filed by one Mr. Manmohan Kapur under Order 1 Rule 10 of the Code.

17. These applications were filed to challenge the executability of the consent order dated 01.06.2012 itself as being null and void. The respondent, in these applications, raised essentially the following three grounds.

18. The first ground was that the appellant obtained the consent order dated 01.06.2012 by concealing the material facts from the respondent which, according to him, was in the nature of fraud. The second ground was that no decree was drawn by the Trial Court after passing the consent order dated 01.06.2012; and the third ground was that the suit in which the consent order dated 01.06.2012 was passed was not maintainable in view of Section 50 of the Delhi Rent Control Act. The appellant filed his reply to the aforementioned applications denying all the three grounds raised by the respondent.

19. By order dated 22.10.2018, the Executing Court dismissed the applications filed by the respondent (Judgment debtor). The Executing Court held that the respondent was indulging in delaying tactics only to avoid the execution of the consent order dated 01.06.2012. The Executing Court dealt with each objection raised by the respondent and found no merit in any of them. The Executing Court held that the respondent having taken time twice to vacate the suit house did not honor the orders of the Court and, therefore, while dismissing his applications and the application of one Mr. Manomohan Kapur imposed a cost of Rs. 5

lakhs upon each of them with a direction to pay 50% to the appellant and remaining 50% to the Delhi Legal Services Authority.

20. The respondent felt aggrieved and filed first appeal before the Delhi High Court. By impugned order, the High Court allowed the appeal and set aside the order dated 22.10.2018 passed by the Executing Court. The High Court held that since the Trial Court did not draw up the formal decree after passing the consent order on 01.06.2012, the Execution Petition filed by the appellant (decree holder) is not maintainable. The High Court, however, granted liberty to the appellant (decree holder) to apply to the Trial Court under Section 152 of the Code for drawing up a decree in terms of the consent order dated 01.06.2012. The appellant (decree holder) felt aggrieved by this order of the High Court and has filed the present appeal by way of special leave in this Court.

21. So, the short question, which arises for consideration in this appeal is whether the High Court was justified in allowing the respondent's (Judgment Debtor's) appeal and thereby was justified in holding that the Execution Petition filed by the appellant (5655/2016) was not maintainable for want of formal decree not being drawn up by the Court after passing of the order dated 01.06.2012.

22. Heard Mr. Huzefa Ahmadi, learned senior counsel, for the appellant and Ms. Aishwarya Bhati, learned senior counsel, for the respondent.

23. Having heard the learned senior counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal, set aside the impugned order and restore the order of the Trial Court with modification as indicated below.

24. In our opinion, the High Court was not right in holding that in the absence of a formal decree not being drawn or/and filed, the appellant (decree holder) had no right to file the Execution petition on the strength of the consent order dated 01.06.2012. This finding of the High Court, in our view, is not legally sustainable for the reasons set out hereinbelow.

25. The issue in this case is required to be decided in the light of Order 20 Rule 6, Order 20 Rule 6A, Order 20 Rule 7, Order 21 Rules 11(2) & (3) and Order 23 Rule 3 of the Code. These provisions read as under:

> "Order 20 Rule 6
>
> Contents of decree. (1) The decree shall agree with the judgment; it shall contain the number of the suit, the names and descriptions of the parties, their registered addresses, and particulars of the claim, and shall specify clearly the relief granted or other determination of the suit.
>
> (2) The decree shall also state the amount of costs incurred in the suit, and by whom or out of what property and in what proportions such costs are to be paid.

(3) The Court may direct that the costs payable to one party by the other shall be set off against any sum which is admitted or found to be due from the former to the latter.

Order 20 Rule 6A

Preparation of decree. (1) Every endeavour shall be made to ensure that the decree is drawn up as expeditiously as possible, and, in any case, within fifteen days from the date on which the judgment is pronounced.

(2) An appeal may be preferred against the decree without filing a copy of the decree and in such a case the copy made available to the party by the Court shall, for the purposes of rule 1 of Order XLI, be treated as the decree. But as soon as the decree is drawn, the judgment shall cease to have the effect of a decree for the purposes of execution or for any other purpose.

Order 20 Rule 7

Date of decree- The decree shall bear date the day on which the judgment was pronounced, and, when the Judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign the decree.

Order 21 Rule 11(2)

Written application—Save as otherwise provided by sub-rule(1), every application for the execution of a decree shall be in writing, signed and verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars, namely—

(a) the number of the suit;

(b) the names of the parties;

(c) the date of the decree;

(d) whether any appeal has been preferred from the decree;

(e) whether any, and (if any) what, payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree;

(f) whether any, and (if any) what, previous applications have been made for the execution of the decree, the dates of such applications and their results;

(g) the amount with interest (if any) due upon the decree, or other relief granted

thereby, together with particulars of any cross-decree, whether passed before or after the date of the decree sought to be executed;

(h) the amount of the costs (if any) awarded;

(i) the name of the person against whom execution of the decree is sought; and

(j) the mode in which the assistance of the Court is required whether—

(i) by the delivery of any property specifically decreed;

[(ii) by the attachment, or by the attachment and sale, or by the sale without attachment, of any property;

(iii) by the arrest and detention in prison of any person;

(iv) by the appointment of a receiver;

(v) otherwise, as the nature of the relief granted may require.
The Court to which an application is made under sub-rule (2) may require the applicant to produce a certified copy of the decree.
Order 23 Rule 3

Compromise of suit— Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit."

26. Order 20 Rule 6 of the Code deals with contents of decree and provides that the decree shall agree with the judgment, it shall contain the number of the suit, the names and descriptions of the parties, their registered addresses and particulars of claim, relief granted or any other determination made in the suit, amount of costs incurred in the suit, and by whom or out of what property and in what proportions, the cost to be paid. Rule 6A deals with the preparation of decree. It says that every endeavor shall be made to ensure that the decree is drawn up as expeditiously as possible and, in any case, within fifteen days from the date on which the judgment is pronounced. Rule 6A (2) of Order 20 of the Code says that an appeal may be preferred against the decree without filing a copy of the decree and in such a case the copy made available to the party by the Court shall for the purposes of Rule 1 of Order 41 be treated as the decree but as soon as the decree is drawn, the judgment shall cease to have the effect of a decree for the purposes of execution or for any other purpose.

27. In our considered opinion, though Rule 6A (2) of Order 20 of the Code deals with the filing of the appeal without enclosing the copy of the decree along with the judgment and further provides the consequence of not drawing up the decree yet, in our opinion, the principle underlined in Rule 6A(2) can be made applicable also to filing of the execution application under Order 21 Rule 2 of the Code.

28. Order 20 Rule 7 deals with the date of decree. It says that the decree shall bear date the day on which the judgment was pronounced and when the judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign the decree.

29. Order 21 Rule 11(2) of the Code, which deals with the execution of the decree, provides that the decree holder is only required to give details of the judgment and the decree in the execution application along with other details [see clauses (a) to (j)].

30. Similarly, Order 21 Rule 11(3) of the Code makes it clear that the Court "may" require the decree holder to produce a certified copy of the decree. This clearly indicates that it is not necessary to file a copy of the decree along with execution application unless the Court directs the decree holder to file a certified copy of the decree.

31. The aforesaid discussion, therefore, leads us to a conclusion that as and when the decree holder files an application for execution of any decree, he is required to ensure compliance of three things.

32. First, the written application filed under Order 21 Rules 10 and 11 (2) of the Code must be duly signed and verified by the applicant or any person, who is acquainted with the facts of the case, to the satisfaction of the Court; Second, the application must contain the details, which are specified in clauses (a) to (j) of Rule 11(2) of the Code, which include mentioning of the date of the judgment and the decree; and Third, filing of the certified copy of the decree, if the Court requires the decree holder to file it under Order 21 Rule 11(3) of the Code.

33. This takes us to deal with next point urged by the learned senior counsel for the appellant. According to learned counsel, the order dated 01.06.2012 itself is capable of being executable by virtue of Section 36 of the Code and, therefore, the High Court was not right in holding that the decree was required to be drawn.

34. The argument is not acceptable for more than one reason. True it is that there are some orders, which are in the nature of decree and thus capable of being executed as such but the question, which arises for consideration in this case, is whether the order passed under Order 23 Rule 3 of the Code is such an order. In our opinion, it is not.

35. First, the language of Order 23 Rule 3 of the Code does not admit passing of an order of the nature urged by the learned senior counsel for appellant; Second, the expression "the court shall order such agreement, compromise or satisfaction to be recorded and shall pass

a decree in accordance therewith" occurring in Order 23 Rule 3 of the Code, in clear terms, suggests that it is necessary after recording the compromise in the order to further pass a decree in accordance therewith.

36. In other words, the expression "and shall pass a decree in accordance therewith" is a clear indication that after the compromise is recorded by the Court, it shall proceed to "pass a decree". So, the rule contemplates, first an order recording of the compromise and then simultaneously pass a decree in accordance with the order.

37. In the light of the clear language of Order 23 Rule 3 of the Code, it is not possible to accept the submission of learned senior counsel for the appellant that the order dated 01.06.2012 itself amounts to a decree and, therefore, it is not necessary for the Court to pass a decree. Had this been the intention, the legislature would not have used the expression "and shall pass a decree in accordance therewith" in Order 23 Rule 3 of the Code.

38. This takes us to examine the next question though not decided by the High Court on merits.

39. As mentioned above, the Executing Court dismissed the applications filed by the respondent with a cost of Rs. 5 lakhs which resulted in issuance of warrant of possession of the suit house. The High Court, by impugned order, set aside the order of the Executing Court and dismissed the execution application as being not maintainable. The High Court, however, did not then consider it necessary to examine the question as to whether the Executing Court was right in rejecting the respondent's applications.

40. We have, therefore, perused the order of the Executing Court. Having perused it, we are of the considered view that the Executing Court was right in rejecting the objections raised by the respondent in his applications and, therefore, find no good ground to interfere in those findings of the Executing Court.

41. In our view, all the objections raised by the respondent were frivolous and were raised only with a view to avoid execution of the compromise decree. None of the objections raised by the respondent could be gone into after consent order had been passed. In any event, none of the objections raised by the respondent had any substance on merits and were, therefore, rightly rejected by the Executing Court to which we concur. In our view, the respondent having taken time twice to vacate the suit house and yet not adhering to the undertaking given, this Court cannot countenance such conduct of the respondent. It is reprehensible.

42. This takes us to examine the next question, namely, what is the effect of not filing the copy of the decree along with the execution application filed by the appellant. In our view, even though the appellant did not file the certified copy of the decree along with the execution application for the reason that the same was not passed by the Court, yet the execution application filed by the appellant, in our view, was maintainable. Indeed, so long

as the formal decree was not passed, the order dated 01.06.2012 was to be treated as a decree during the interregnum period by virtue of Order 20 Rule 6A (2) of the Code. In other words, notwithstanding the fact that the decree had not been passed, yet by virtue of principle underlined in Order 20 Rule 6A(2) of the Code, the order dated 01.06.2012 had the effect of a decree till the date of actual passing of the decree by the Court for the purposes of execution or for any other purpose. This empowered the Executing Court to entertain the execution application and decide the objections raised by the respondent on merits.

43. This takes us to examine the last point as to whether the High Court was justified in directing the appellant to apply under Section 152 of the Code for drawing a decree.

44. In our opinion, though the High Court was right in directing the appellant to apply to the Court for drawing a decree, but was not right in directing to apply under Section 152 of the Code.

45. Section 152 of the Code deals with the amendment of judgments, decrees or orders. It provides that any clerical or arithmetical mistakes in the judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties. Order 20 Rule 3 also provides that judgment can be altered or added either under Section 152 or in review.

46. In our opinion, in order to invoke the powers under Section 152 of the Code, two conditions must be present. First, there has to be a judgment or decree or an order, as the case may be, and second, the judgment or decree or order, as the case may be, must contain any clerical or arithmetical error for its rectification. In other words, Section 152 of the Code contemplates that the Court has passed the judgment, decree or the order and the same contains clerical or arithmetical error.

47. Any party to such judgment, decree or order, as the case may be, has a right to apply at any time under Section 152 of the Code to the concerned Court for rectification of any arithmetical or/and clerical error in the judgment, decree or the order, as the case may be.

48. In the case at hand, we find that the Court, which disposed of the suit, did not draw the decree but only passed the order. In such a situation, the decree holder was required to file an application under Section 151 read with Order 20 Rule 6A of the Code to the Court for drawing a decree in accordance with the order dated 01.06.2012. Indeed, we find in the concluding para of the order dated 01.06.2018 that the Court has already directed to ensure compliance of the formalities. It would have been, therefore, proper in such circumstances for the Court to simultaneously draw a decree the same day itself or in any event within 15 days as provided in Order 20 Rule 6A.

49. Be that as it may, this being a procedural matter, even if it was not done, yet the same could be done by the Court at the instance of the appellant (decree holder) applying for

drawing up a decree after filing of the execution application.

50. This takes us to examine the last question as to whether the Executing Court was right in imposing a cost of Rs.5 lakhs on the respondent for filing applications raising therein frivolous objections to avoid execution of the decree against them. As mentioned above, the Executing Court while rejecting the respondent's objection imposed a compensatory cost of Rs.5 lakhs on the respondent. In our view, though we find that it is a fit case for imposition of cost but imposition of cost of Rs.5 Lakhs is excessive.

51. Having regard to all facts and circumstances of the case which we have discussed above, we consider it just and proper to impose a compensatory cost of Rs. 50,000/- on the respondent under Section 35-A of the Code. Let it be paid by the respondent to the appellant within one month from the date of this order.

52. We are, therefore, of the considered opinion that the High Court was not right in holding that the execution petition itself is not maintainable. The High Court though was right in directing the appellant to apply to the concerned Court for drawing up a decree but the High Court was not right in directing the appellant to apply it under Section 152 of the Code.

53. In view of the foregoing discussion, we hold that the execution petition filed by the appellant is maintainable and was, therefore, rightly allowed by the Executing Court by rejecting the objections raised by the respondent except with two modifications indicated above.

54. The appellant is hereby granted two weeks' time to apply under Section 151 read with Order 20 Rule 6(A) of the Code to the concerned Court with a prayer for passing a decree in accordance with the order dated 01.06.2012 passed under Order 23 Rule 3 of the Code. In the peculiar circumstance of this case, we would expect the Court concerned to pass and draw the decree without any delay and, in any case, within one week of moving of the application by the appellant. It is also made clear that such act of passing and drawing up the decree being formal in nature, no objection or dispute in that regard is to be entertained by any Court. Once the decree is drawn and its details are specified in the execution application as provided under Order 21 Rule 11 (2)(c) and the certified copy of the decree is filed, if required by the Court, in terms of Order 21 Rule 11(3) of the Code, the order of the Executing Court dated 22.10.2018 with the above modification regarding payment of costs amount will be given effect to against the respondent.

55. Let the aforementioned procedural proceedings be completed within the time framed by the concerned Court. The respondent is, however, granted one month's time to vacate the suit house after completion of the procedural formalities by the concerned Court after making payment of all arrears of rent till the date of delivery of possession of suit house to the appellant.

56. In view of the foregoing discussion, the appeal succeeds and is accordingly allowed.

SpotLaw

The impugned order is set aside whereas the order of the Executing Court is modified to the extent indicated above.