

CRP 28/2009
BEFORE
THE HON'BLE MR. JUSTICE B.P. KATAKEY

Heard Mr. AK Goswami, the learned Sr. Counsel for the petitioner. The petitioner/judgment debtor, by the present petition, has challenged the order dated 25-11-2008 passed by the learned Executing Court in Misc. (J) Execution Case No.8/2006 arising out of the Title Execution Case No. 14/2000 rejecting the application filed by the petitioner under Section 47 read with Section 151 of the CPC contending that as the Court cannot pass a decree for damage in a suit filed for eviction of the tenant under the provisions of the Assam Urban Areas Rent Control Act, 1972 (in short, the Act) the decree passed by the learned Court below in that respect is non executable being nullity. The decree holder/opposite party instituted Title Suit No.59/1991 against the present petitioner as defendant, under the provisions of the Act praying for the following reliefs:-

13. The plaintiff prays for:-
- a) A decree for eviction of the defendant and for Khas possession of the premises of Schedule 'B' by evicting the defendant therefrom.
 - b) A decree for Rs.750/- (Rupees seven hundred fifty) as arrear rent from May, 1990 to September, 1990.
 - c) A decree for Rs.4140/- (Rupees four thousand one hundred forty) only as damage from 1-10-90 to 15-2-91 at the rate of Rupees thirty per day.
 - d) A further decree of damage at the rate of Rupees thirty per day from 16th February, 1991, till the defendant is finally evicted.
 - e) A decree for interest at the rate of 11% per annum on the decretal amount till the entire amount is realized.
 - f) A decree for cost of the suit and any other decree to which the plaintiff may be entitled.

The learned Munsiff No.1, Dhubri vide judgment dated 30-06-1993 decreed the suit for eviction of the present petitioner from the suit premises and also deciding the issue Nos.6 and 7 in favour of the plaintiff/opposite party herein by holding that he is entitled to the reliefs claimed under 13 (b), (c) and (d) as quoted above, apart from the relief claimed under (a). A decree accordingly was drawn on 06-07-1993.

Against the said decree though an appeal has been preferred by the present petitioner before the Lower Appellate Court, the same was, however, dismissed by the learned Assistant District Judge, Dhubri vide judgment and order dated 18-02-2000 upholding the judgment and decree passed by the learned Trial Court. Being aggrieved, a revision petition was preferred before this court being CRP No.120/2000, which has also been dismissed vide judgment and order dated 10-01-2006, against which a special leave petition seeking leave to appeal has been filed by the present petitioner before the Apex Court, which has also admittedly been dismissed refusing to grant the leave to appeal. Thus the decree passed by the learned First Court has attained its finality, which has been put into execution in the aforesaid execution proceeding by the decree holder.

Upon receipt of the notice in the execution proceeding, the present petitioner initially filed an application under Section 47 of the CPC objecting the execution of the decree on the ground that the decree holder cannot claim the amount as shown in the five different heads and is not entitled to the said sum as the judgment passed by the Court has not directed payment of any such amount. In the said application, the petitioner, however, has fairly stated that the Executing Court cannot go beyond the decree.

The said application has been dismissed by the learned Executing Court vide order dated 06-07-2006 on the ground that what has been prayed for in the execution proceeding by the decree holder is not beyond the decree passed by the learned Court below. The same was challenged before this Court in CRP No.268/2006, which has been dismissed by this Court vide order dated 06-09-2006.

The petitioner again on 20-09-2006, after dismissal of the aforesaid revision petition on 06-09-2006, filed another application under Section 47 read with Section 151 of the CPC raising the same contention as was raised in the earlier application under Section 47 of the CPC, which was dismissed and such order of dismissal was upheld by this Court in the aforesaid revision petition. The petitioner thereafter, filed another application in continuation of the second application filed under Section 47 of the CPC contending that the decree holder has no right, title and interest in the suit as it has been sold to someone else and the rent of the suit house have been fully paid during the tenancy period and as such, the execution proceeding is not maintainable and also on the ground that the decree is in violation of the provisions of the Act.

The learned Executing Court, upon consideration of the averments made in the said application as well as the objections filed thereto and also upon hearing the learned counsel for the parties, by the impugned order dated 25-11-2008 has rejected the contention of the present petitioner/judgment debtor and consequently, rejected the said application filed under Section 47 of the CPC on the ground that at the execution proceeding has been filed in terms of the decree passed and such decree has been drawn in terms of the judgment passed by the learned Court below.

It appears from the judgment passed by the learned Trial Court on 30-06-1993 that the suit has also been decreed as per the prayer made in paragraphs 13 (b), (c) and (d), which have already been reproduced above. The decree was accordingly drawn in terms of the judgment passed. The said judgment and decree was unsuccessfully challenged up to the level of the Apex Court by the present petitioner. The said judgment and decree has attained its finality. On perusal of the aforesaid judgment and decree, as noticed above, it is evident that the decree has been passed in terms of the prayer made in paragraphs 13 (b), (c) and (d), apart from the prayer made in paragraph 13 (a) and, therefore, the contention of the petitioner that the decree was not drawn in terms of the judgment passed, cannot be accepted. The other ground, on which the objection to the decree has been made that no damage can be awarded in a suit filed under the provisions of the Act, also cannot be accepted at this stage, the petitioner having unsuccessfully challenged the decree passed. The other contention in the application under Section 47 of the CPC that during the continuance of the tenancy, that rent was paid, cannot also be accepted at this stage, in view of the aforesaid judgment passed by the learned Court below and the findings recorded therein. The question of the decree holder having no right, title and interest over the property was not raised in the suit and such question cannot also be raised by a tenant in a suit for eviction under the Rent Control Act, the tenancy having been admitted and decided.

In view of the aforesaid discussion, I am of the view that no illegality has been committed by the learned Executing Court in passing the impugned order dated 25-11-2008 requiring interference of this Court in exercise of the jurisdiction under Article 227 of the Constitution of India.

Hence, the revision petition is dismissed. No cost.