



2019 INSC 1076

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7593 OF 2019
(Arising out of SLP(C) No.16682 of 2019)

M/S BAGALKOT UDYOG LIMITED

APPELLANT(S)

VERSUS

SHIVASHANKARGOUDA & ORS.

RESPONDENT(S)

J U D G M E N T

Leave granted.

Heard learned counsel for the parties.

The short issue involved in this case is whether the High Court was right in remitting the matter back to the Executing Court to decide whether the order passed by it is in accordance with decree passed by the Civil Court or not.

The undisputed facts are that the appellant was a lessee under the respondents pursuant to a lease deed dated 19.11.1952 commencing from 01.04.1953. The lease was for a period of 30 years ending on 31.03.1983 and contained a clause giving right of renewal of the lease for another period of 30 years commencing from 01.04.1983 to 31.03.2013.

The appellant exercised his right to extend the lease but the respondents refused to extend the lease for a period of 30 years. Therefore, the appellant filed a suit for specific performance of the condition permitting him to extend the lease deed for 30 years. This suit was decreed and the relevant portion of the decree reads as follows:

"2. That the costs of this suit be awarded from the defendants to the plaintiff.

This suit coming on this 10th day of June 1991, for final disposal before Sri. Rudragouda S. Patil B.A.LL.B (Spl) Principal Munsiff, Bagalkot in the present of Sri. G.G. Dharawadkar, Advocate for the plaintiff and Sri. K.S. Deshpande, Advocate for Defendants, it is hereby ordered and decreed as under:-

The plaintiff entitled for a decree for specific performance of contract of getting executed a registered lease deed from the defendants for a period of 30 years commencing from 1.4.1983 to 31.3.2013 on a yearly rent of Rs.700/- in respect of the suit-lands bearing R.S. Nos.169, 171, 180, 181 and 182 situated at Bagalkot.

The plaintiff is also entitled for costs of the suit.

And it is further ordered and decreed that the defendants to pay the sum of Rs.201/- to the plaintiff being the costs of this suit.

Given under my hand and seal of this court this 10th day of June 1991.

(Rudragouda S. Patil)
Principal Munsiff, Bagalkot"

The appellant filed petition for execution of the decree and the respondents were proceeded ex parte. An

Advocate Commissioner was appointed to execute the lease deed on behalf of the absent respondents. It appears that lot of interim orders were passed asking for report from the administrative side of the Court for preparation of the draft lease deed. Finally, the draft lease deed was prepared and in the draft lease deed there was again a clause granting a right for one more extension from 01.04.2013 onwards. The lease deed was drafted in the same manner as the earlier lease deed. The Executing Court on the administrative side virtually retyped the lease deed as the earlier lease deed of 1952 including the renewal clause. Thereafter, this draft deed was finally registered on 17.08.2010. The plaintiff got his execution petition dismissed as having been satisfied on 20.08.2010.

The appellant then filed a fresh suit for specific performance for renewal of the lease deed w.e.f. 01.04.2013 and when notice of this suit was served upon the respondents they filed a writ petition presumably under Article 227 of the Constitution of India praying for setting aside the order dated 20.08.2010 but in the petition it was urged that the Executing Court while drafting the lease deed in terms of the decree had travelled beyond the scope of the decree by again giving an extension clause of 30 years w.e.f. 01.04.2013. This writ petition was dismissed on the ground of not being maintainable since the execution petition itself was

disposed of on 20.08.2010. Thereafter the appellant filed a petition under Section 115 of the Code of Civil Procedure.

This petition was contested but the High Court vide a detailed order has held as follows:

".....Therefore, this Court is of the considered view that the Executing Court, even in the peculiar facts and circumstances of the present case, must examine the question whether it was traversing beyond the judgment and decree in OS No.20/1984 in approving the draft as submitted by the respondent and permitting execution and registration thereof...."

Shri C.U. Singh, learned senior counsel appearing for the appellant urges that the order dated 20.08.2010 cannot be challenged in proceedings under Section 115 of the Code of Civil Procedure since this order only disposes of the execution petition in terms of the statement of the decree holder and in case the order is set aside it will amount to revival of proceedings and proceedings will not come to an end. The second submission is that the remedy of the appellant is to file application under Order XXI Rule 106 of the Code of Civil Procedure and not to file a petition under Section 115 of the Code of Civil Procedure. His last submission is that the respondents have resorted to proceedings under Section 115 of the Code of Civil Procedure since their remedy to challenge the order proceeding against them ex

parte has become time barred in view of the limitation of 30 days mandated in order XXI Rule 106 of the Code of Civil Procedure.

In reply, it is contended by Shri S.N. Bhat, learned counsel for the respondents, that the respondents are not challenging the order whereby they have been proceeded ex parte. It is submitted that even accepting the position that the respondents have rightly been proceeded ex parte, then also the decree must be executed in terms of the decree and the executing Court cannot give relief more than that granted under the decree. The issue, that arises is whether the Executing Court could have given one more extension beyond 2013 or not.

Since, the matter has been remanded back in proceedings under Section 115 of the Code of Civil Procedure, we would not like to make any comments on this issue and leave it open to the Executing Court to decide whether the decree envisages the grant of extension beyond 01.04.2013. We are only dealing with the issue as to whether the High Court was right in exercising its jurisdiction under Section 115 of the Code of Civil Procedure.

As noted above, the petition, filed by respondents against the order dated 04.08.2010, was dismissed by the High Court in view of the order passed on 20.08.2010. It was virtually held that nothing survives in the writ petition and, therefore, the same is not maintainable. At

the same time, the appellant was given liberty to seek relief in accordance with law.

The respondents have not taken recourse to Order XXI Rule 106 and, therefore, they are estoppel from urging that they were wrongly proceeded ex parte. That part of the proceedings are final. That, however, cannot prevent them from urging that the order passed by the Executing Court is beyond the scope of the decree passed by the Civil Court. No appeal lies against any such order and no provision has been pointed out to us where an appeal can lie against this aspect of the matter where the Executing Court allegedly travelled beyond the scope of the decree. No party can be left remedy-less. The High Court dismissed the petition under Article 227 of the Constitution of India holding that the challenge to order dated 04.08.2010 was no longer alive in view of the subsequent proceedings of 20.08.2010. We are also of the view that merely because the execution petition will revive is not a ground to hold that the order is not a final order which will bring an end of the proceedings. If the Executing Court accepts the contention of the respondents that the lease could not have been extended beyond 31.03.2013 then also it will bring matters to an end. There will be no continuity of proceedings in that sense. Therefore, the High Court was well within its jurisdiction to entertain the matter. The order passed calls for no interference and, therefore, the appeal is

dismissed.

We make it clear that the Executing Court will decide the issue as to whether the decree limited the renewal of the lease deed up to 31.03.2013 or the decree permitted another extension thereafter. The Executing Court shall remain uninfluenced by any observations made by the High Court or by this Court.

.....J.
(DEEPAK GUPTA)

.....J.
(ANIRUDDHA BOSE)

New Delhi
September 24, 2019

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s).16682/2019

(Arising out of impugned final judgment and order dated 24-04-2019 in CRP No.1113/2013 passed by the High Court Of Karnataka, Dharwad Bench)

M/S BAGALKOT UDYOG LIMITED

Appellant(s)

VERSUS

SHIVASHANKARGOUDA & ORS.

Respondent(s)

(FOR ADMISSION and I.R.)

Date : 24-09-2019 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DEEPAK GUPTA
HON'BLE MR. JUSTICE ANIRUDDHA BOSE

For Appellant(s)

Mr. C.U. Singh, Sr. Adv.
Mr. Aayush Agarwala, Adv.
Ms. Ila Sheel, Adv.
Mr. Pramod B. Agarwala, AOR

For Respondent(s)

Mr. S. N. Bhat, AOR
Mr. Priyank Jain, Adv.
Mr. Nandish Patil, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is dismissed in terms of the signed reportable judgment.

Pending application(s), if any, stands disposed of.

(ARJUN BISHT)
COURT MASTER (SH)

(RENU KAPOOR)
BRANCH OFFICER

(signed reportable judgment is placed on the file)