

ITEM NO.25

COURT NO.15

SECTION XVI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 14580/2020

(Arising out of impugned judgment and order dated 09-12-2019 in SMA No. 317/2006 passed by the High Court At Calcutta)

BIDHAN BASAK

PETITIONER(S)

VERSUS

MANAS GUHA & ORS.

RESPONDENT(S)

(IA No. 51218/2023 - APPLICATION FOR PERMISSION, IA No. 149724/2021 - APPLICATION FOR PERMISSION, IA No. 123936/2020 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 30845/2023 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 28-03-2023 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN
HON'BLE MR. JUSTICE PANKAJ MITHAL

For Petitioner(s)

Mr. Bharat Sood, Adv.
Mr. Sudipta Kumar Bose, Adv.
Mr. P. S. Sudheer, AOR
Mr. Rihshi Maheshwari, Adv.
Ms. Anne Mathew, Adv.
Ms. Shruti Jose, Adv.

For Respondent(s)

Mr. F. I. Choudhury, AOR
Ms. Santosh, Adv.
Mr. Mohit Kumar, Adv.

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

This special leave petition arises out of execution proceedings.

We have heard learned counsel for the petitioner and learned counsel appearing for respondent nos. 2 and 3.

This case has had a chequered history, which in brief can be summarized as follows:

(1) The petitioner was admittedly a tenant in respect of the subject property. The original landlord by name Shambhu Nath Ghosh, who now rests in peace, initiated proceedings for eviction of the tenant, way back in the year 1981. The eviction suit ended in a compromise decree dated 17.11.1984.

(2) The original tenant, Anil Kumar Basak, died on 26.10.1989 and he is also now resting in peace.

(3) The legal heirs of the landlord, who were the decree holders, sold the property by a deed of sale dated 11.06.1992 to respondent no.1. Respondent no.1 filed a petition for execution of the compromise decree dated 17.11.1984. To be precise, the execution petition was filed on 06.08.1999, after 15 years of the date of the decree. In the execution petition, it was contended by the decree holder that the tenant failed to pay rent continuously from the date of the compromise decree and that as per the terms of the decree, the decree of eviction could be executed if there was a

default in payment of rent for two months. By virtue of the very pleadings contained in the execution petition, the execution petition was obviously barred by limitation.

(4) Adding to the tale of woes of the petitioner, the execution was laid against the original tenant, who had already died on 26.10.1989. In other words, the execution was filed against a dead person.

(5) The Executing Court ordered delivery on 27.01.2000, against a dead person, but the warrant was returned by the bailiff on 28.01.2000, without any indication about the death of the judgment debtor.

(6) On account of the return of the warrant of delivery by the bailiff, the decree holder filed an application under Order XXI Rule 97 of the Code of Civil Procedure, 1908 ('CPC') for police protection on 09.03.2000. But this petition was also filed only against a dead person.

(7) However, the execution petition got amended on 14.07.2000, by impleading the legal heirs of the judgment debtor. Thereafter, the decree holder filed a fresh petition under Order XXI Rule 97 CPC on 18.01.2001.

(8) By an order dated 26.08.2005, the Executing Court allowed the petition for police protection.

(9) The legal representatives of the judgment debtor filed an appeal, but the same was dismissed by the District Court by an order dated 14.02.2006. The said order was also confirmed by the

High Court in a Second Appeal, by an order dated 09.12.2019, which is impugned in the present special leave petition.

In the interregnum one more development took place. The respondent no.1, after purchasing the property from the decree holder under the document dated 11.06.1992, mortgaged it to the bank. Now it was his turn to commit default and the bank brought the property to sale. Respondent nos. 2 and 3 purchased the property through Debt Recovery Tribunal under a sale certificate dated 26.09.2011.

Therefore, the contest is now between the legal heirs of the judgment debtor (tenant) and the third party purchasers, from a person who purchased it from the decree holder.

There is no doubt in our mind that the execution filed by respondent no.1 on 06.08.1999 was clearly barred by limitation. This is in view of the very pleadings that respondent no.1 had made in the execution petition, to the effect that the tenant has been committing default in payment of the rent from 1984 onwards. Under the terms of the compromise decree dated 17.11.1984, the moment a default in payment of rent for two months is committed, the cause of action for the decree holder to file execution petition had arisen. From that date, a period of 12 years was available by the decree holder to file execution petition. But unfortunately, the decree holder filed the petition for execution after almost more than 14 years.

Moreover, the execution petition was filed against a dead

person and delivery was also ordered only against a dead person. The contention that the legal representatives were impleaded subsequently and a fresh petition under Order XXI Rule 97 CPC was filed, cannot cure the defect in the original order of delivery passed against a dead person. The Executing Court should have started the proceedings afresh from the stage that was prior to the date of delivery. In other words, the Executing Court should have heard the legal representatives afresh before passing the fresh order of delivery. This was not done.

In view of the aforesaid illegalities, the special leave petition in normal circumstances should have been allowed. But there is a hitch. The petitioner today has lost possession. It is true that the possession was taken during the period of pandemic when the petitioner could not approach this Court and get an interim order. But on the date on which this Court ordered notice and granted *status quo*, i.e. 16.04.2021, the petitioner had already lost possession.

Therefore, the question to be examined is whether this is a fit case for ordering restitution in favour of the petitioner. The answer is obviously in the negative. The petitioner had been a tenant for nearly 60 years. The eviction proceedings commenced in the year 1981. The suit took only three years to get fruition to a decree, and that too, a compromise decree in 1984. But the execution proceedings had successfully taken about 40 years. Therefore, this is not a case where we should exercise our

jurisdiction under Article 136 of the Constitution of India, for putting the petitioner back to possession.

Hence, on this only ground, the special leave petition is dismissed.

Pending application(s), if any, shall stand disposed of.

(POOJA SHARMA)
COURT MASTER (SH)

(RENU BALA GAMBHIR)
COURT MASTER (NSH)