

CIVIL REVISION

Present: The Hon'ble Mr. Justice Prasenjit Mandal

Judgment on 26.08.2010

C.O. No.2067 of 2008

With

C.O. No.2096 of 2008

Eastern Circle yellow Pages Pvt. Ltd.

Versus

Dr. Amal Kr. Ghosh

Points:

Satisfaction of decree-Decree has been fully satisfied with deposit of the decretal dues and delivery of possession before passing the decree-No decree for mesne profit- Whether the decreeholder can proceed with the execution of decree- Code of Civil Procedure 1908 O 22 R11

Facts:

The judgment debtor delivered vacant possession of the suit premises and had handed over the vacant possession of the same before passing of the ex parte decree. In spite of that fact, the learned Trial Judge passed an ex parte decree for recovery of possession with costs. The judgment debtor filed an application to drop the execution application. But the learned Trial Judge rejected the application.

Held:

The delivery of possession was taken by the caretaker of the premises at the instance of the opposite party on January 31, 2006 and this is, I hold, sufficient compliance with regard to the delivery of possession by a tenant in favour of the plaintiff.

Para 10

Upon getting a notice of the execution application, the petitioner deposited the decretal amount of Rs.18,272/- in May, 2007 by way of challan bearing no.8443. The decree was for delivery of possession and costs. Since the decree has been fully satisfied with deposit of the decretal dues, the decreeholder cannot have any other claim. It is not at all a decree for mesne profits. The decreeholder is not also entitled to have any claim against the defendant/judgment debtor since after delivery of possession on January 31, 2006.

Para 11

For the Petitioner : Mr. Priyabrata Ghosh.

For the Opposite party: Mr. Hiranmoy Bhattacharyya.

Prasenjit Mandal, J.: These two applications have arisen out of the order no.12 dated April 25, 2008 and order no.11 dated March 27, 2008, passed by the learned Civil Judge (Senior Division), Second Court at Barasat upon an application under Order 21 Rule 11 of the Code of Civil Procedure and under Section 151 of the C.P.c. respectively relating to delivery of possession in favour of the decreeholder in Title Execution Case No.3 of 2007 arising out of the Title Suit No.59 of 2004.

2. Since the same question of law is involved in the two matters, the two applications are disposed of by this common judgment.

3. The short fact of the case is that the plaintiff/opposite party/decreeholder filed the Title Suit No.59 of 2004 for eviction against the tenant/defendant/petitioner herein from the suit premises, as described in the schedule of the plaint, in the Court of the learned Civil Judge (Senior Division), Second Court, Barasat. That suit was decreed ex parte against the defendant with costs on October 26, 2006. The defendant was directed to

vacate and deliver the peaceful possession of the suit premises in favour of the plaintiff within six months from the date of the order, failing which the plaintiff will be at liberty to put the said decree into execution.

4. The contention of the defendant/petitioner is that before passing the said decree on October 26, 2006 actually he delivered vacant possession of the suit premises in favour of the plaintiff/decreeholder on January 31, 2006 and such delivery of possession was duly taken by the decreeholder. The defendant/petitioner had also intimated the plaintiff that peaceful and vacant possession was delivered on that day by a registered letter with an acknowledgement due card. That acknowledgement due card was returned to the defendant/petitioner with an endorsement of the plaintiff/decreeholder.

5. Not only that, by swearing an affidavit, the petitioner had informed that the defendant had delivered vacant possession of the suit premises on January 31, 2006 and had handed over the vacant possession of the same. In spite of that fact, the learned Trial Judge passed an ex parte decree for recovery of possession with costs. The petitioner filed an application to drop the execution application. But the learned Trial Judge rejected the application by the order no.11 dated March 27, 2008. He also noted in the said impugned order that the execution case shall proceed as usual. Thereafter by the next order no.12 dated April 25, 2008 he issued direction upon the bailiff to execute the writ of delivery of possession by breaking open the padlock. Being aggrieved, the judgment debtor/petitioner has preferred these two application.

6. The question is whether the impugned orders can be sustained.

7. Upon hearing the submission of the learned Advocate of both the sides and on perusal of the materials on record and also the entire copy of the order sheet of the Title Execution No.3 of 2007 as supplied by Mr.

Bhattacharya, I find that the petitioner has filed the xerox copy of the letter dated January 31, 2006, copy of the postal receipt and the acknowledgement due car collectively marked as B series to prove that on January 31, 2006 the petitioner had delivered vacant possession of the suit premises in favour of the plaintiff. Not only that, before delivery of possession, the petitioner wrote letters to the Calcutta Telephones on January 27, 2006 intimating that all the telephone connections of the suit premises standing in his name should be disconnected since he was going to deliver possession of the suit property by the end of January, 2006. The commercial officer, Bidhannagar took necessary actions on those letters marked exhibit C series collectively.

8. Not only that the petitioner asked the West Bengal State Electricity Board to disconnect electric supply to the suit premises and the copy of such letter has been marked as annexure D to the application.

9. Though the plaintiff / landlord received the letter marked exhibit B series, he did not raise any objection or protest.

10. The delivery of possession was taken by the caretaker of the premises at the instance of the opposite party on January 31, 2006 and this is, I hold, sufficient compliance with regard to the delivery of possession by a tenant in favour of the plaintiff.

11. In spite of that, the opposite party filed the application for execution of the decree being number as Title Execution Case No.3 of 2007. Upon getting a notice of the execution application, the petitioner deposited the decretal amount of Rs.18,272/- in May, 2007 by way of challan bearing no.8443. The decree was for delivery of possession and costs. Since the decree has been fully satisfied with deposit of the decretal dues, the decreeholder cannot have any other claim. It is not at all a decree for mesne profits. The decreeholder is not also entitled to have any claim against the

defendant/judgment debtor since after delivery of possession on January 31, 2006.

12. Under the circumstances, I am of the view that the learned executing court has committed a wrong in rejecting the petition of the petitioner with observation that the execution case shall proceed in accordance with law. For the same reason, the order for delivery of possession by breaking open the padlock cannot be supported. Decree as passed by the learned Trial Court having been fully satisfied, since no other claim is made by the decreeholder in the instant application for execution of the decree, I am of the view that continuance of the execution case cannot be supported. The orders impugned cannot also be supported at all and so the impugned orders should be set aside.

13. Accordingly, the two applications succeed. They are allowed. The orders impugned are hereby set aside.

14. There will be no order as to costs.

15. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.

(Prasenjit Mandal, J.)

