

Civil Revision

Present:

The Hon'ble Justice Jyotirmay Bhattacharya

Judgment on 03.09.2010

C.O. No. 1643 of 2007

With

C.O. No. 2294 of 2010

RAMKRISHNA CHANDA & ORS.

VERSUS

SRIKRISHNA CHANDA.

Points:

Stay of execution-Probate court being refused to stay the order appointing administrator pendente lite whether executing court can grant stay of execution till the disposal of probate case.- Code of Civil Procedure, 1908 S.151

Facts:

Suit for eviction of a tenant was decreed. The decree was put in execution. The decree holder died. Opposite party no.1 got appointed as administrator pendente lite from the probate court for administering the estate of the decree holder. Petitioner, being other heir of the decree holder, prayed for stay of the order of appointing administrator. Probate court refused to grant any stay order as prayed for by the petitioner. Petitioner filed an application in the executing court for stay of further proceeding till the disposal of the probate case.

Held:

Since the opposite party No.1 was appointed as an Administrator Pendente lite by the Probate Court and his appointment still remains valid and

operative, further proceeding of the execution case cannot be kept in abeyance in view of the fact that if such an order is passed then practically the effect of the order passed by the Probate Court refusing to grant stay of the order of appointment of the Administrator Pendentialite so far as it relates to the administrator's authority to proceed with execution proceeding, will be nullified such order cannot be passed by this Court as the order passed by the learned Probate Court in the probate proceeding refusing to grant stay of the operation of order of appointment of Administrator Pendentialite, remains unchallenged before this Court. Para 11

For the Petitioner : Mr. S.P. Roy Chowdhury

Mr. Shyamal Chakraborty

For the O. P. No.1 : Mr. Raj Narayan Dutta

The Court: Two revisional applications were filed by the petitioners herein. Both the applications were filed under Article 227 of the Constitution of India. In one of such applications being C.O. No. 1643 of 2007 the petitioners have challenged an order being No. 55 dated 3rd February, 2007 passed by the learned Civil Judge, Senior Division, Sealdah, in Title Execution Case No. 5 of 1996 whereby the petitioners' prayer for keeping the execution proceeding in abeyance till the disposal of the probate proceeding being O.S. No. 87 of 2001 was rejected by the learned Executing Court. In the other application being C.O. No. 2294 of 2010 the petitioners have prayed for issuance of direction upon the learned Probate Court for early disposal of their application for removal of the Administrator Pendentialite.

2. Let me now consider the merit of those two revisional applications one after another.

Re: C.O. 1643 of 2007

3. The predecessor-in-interest of the petitioners as well as the opposite party No.1 filed an eviction suit against the proforma opposite party. The said suit was decreed on contest. An appeal was filed against the said decree by the tenant/opposite party No.2 but the said appeal was also dismissed on 14th May, 2002. Since the defendant/judgment debtor did not vacate the said property in compliance of the said decree, the said eviction decree was put into execution by the original decree holder. After the death of the original decree holder the opposite party No.1 was allowed to proceed with the said execution proceeding as he was appointed as an Administrator Pendentilite by the Probate Court on 19th July, 2001 in a probate proceeding being Original Suit No. 8 of 2001 which was filed by the opposite party No.1 herein, for grant of probate to the will left by his father namely the original decree holder herein.

4. The opposite party No.1 herein was appointed as an Administrator Pendentilite by the Probate Court in the probate proceeding on 19th June, 2001 vide order No. 3 on the following terms:-

- i) The Administrator shall prosecute and/or defend suits or proceedings concerning the estate;
- ii) Shall supervise the business, properly and maintain accounts;
- iii) Shall pay all rates and taxes;
- iv) Shall make an inventory of the materials of the business and shall submit a report of the inventory and submit accounts every six months.

5. The petitioners herein, who are the other heirs of the original decree holder, are contesting the said probate proceeding.

6. The said petitioners filed an application for removal of the Administrator Pendentilite, in the said probate proceeding. The petitioner's prayer for removal of the Administrator Pendentilite, is pending for disposal before the learned Probate Court.

7. In this background the petitioners filed an application in the execution case inter alia praying for keeping further proceeding of the execution case in abeyance till the disposal of the probate proceeding.

8. The judgment debtor has also filed an application for rejection of the execution case as the judgment debtor claimed that the execution case cannot be proceeded with until the dispute amongst the legal heirs of the original decree holder is resolved in the probate proceeding. Both the applications filed by the petitioners as well as the judgment debtor respectively were rejected by the learned Executing Court. The judgment debtor has not come forward to challenge the order before this Court. The petitioners who were the other legal heirs of the original decree holder have come forward to challenge that part of the impugned order by which their prayer for keeping further proceeding of the execution case in abeyance till the disposal of the probate proceeding was rejected by the learned Executing Court. As such this Court will concentrate only to the merit of the petitioner's said application which was disposed of by the learned Executing Court in the impugned order.

9. Mr. Ray Chowdhury, learned Senior Counsel, appearing for the petitioners, submitted that apparently the learned Executing Court did not commit any illegality by permitting the Administrator Pendentilite to continue with the said execution proceeding as the Administrator Pendentilite is otherwise competent to proceed with the said execution proceeding by virtue of his appointment as Administrator Pendentilite by the

learned Probate Court. Mr. Ray Chowdhury however submitted that since the petitioners have filed an application for removal of the said Administrator Pendentilite before the learned Probate Court, the learned Executing Court ought to have kept the proceeding of the execution case in abeyance, at least till the disposal of the petitioners' prayer of removal of the opposite party No.1 from the post of Administrator Pendentilite by the learned Probate Court. Mr. Ray Chowdhury thus ultimately submitted that since the petitioner's' prayer for removal of the opposite party No.1 from the post of Administrator is pending for disposal before the Probate Court for substantial period, the Probate Court should be directed to expedite the disposal of the petitioner's said application and the proceeding before the Executing Court should be stayed till the disposal of the petitioners' application for removal of the opposite party No.1 from the post of Administrator Pendentilite by the learned Probate Court.

10. Mr. Dutta, learned Advocate, appearing for the opposite party No.1 refuted such submission of Mr. Ray Chowdhury by contending that the proceeding before the learned Executing Court cannot be suspended as the petitioners herein became unsuccessful in their application wherein they prayed for stay of the operation of the order of appointment of Administrator Pendentelite passed by the learned Probate Court on 19th July, 2001. Mr. Dutta submitted that immediately after the appointment of the opposite party No.1 as Administrator Pendentilite by the learned Probate Court in the probate proceeding, the petitioners filed an application before the learned Probate Court inter alia praying for stay of the order of appointment of the opposite party No.1 as Administrator Pendentilite but ultimately such prayer for stay was disallowed by the learned Probate Court though the order of appointment was modified to some extent, as the operation of the term no.2

and term no.4 mentioned in the order of appointment was kept under suspension. Mr. Dutta thus submitted that since the authority of the Administrator Pendentalite to prosecute and/or defend suits or proceedings concerning the estate was not stayed by the learned Probate Court, further proceeding in the execution case cannot be suspended as prayed for by the petitioners herein. Mr. Dutta further submitted that the petitioners herein have not yet filed their written statement in the probate proceeding and thus they are responsible for the delay in disposal of the probate suit. As such the petitioners cannot complain for the delay in disposal either of the probate suit or of their application for removal of the Administrator Pendentalite.

11. After hearing the learned Counsel of the respective parties, this Court is of the view that since the opposite party No.1 was appointed as an Administrator Pendentalite by the Probate Court and his appointment still remains valid and operative, further proceeding of the execution case cannot be kept in abeyance in view of the fact that if such an order is passed then practically the effect of the order passed by the Probate Court refusing to grant stay of the order of appointment of the Administrator Pendentalite so far as it relates to the administrator's authority to proceed with execution proceeding, will be nullified such order cannot be passed by this Court as the order being No. 5 dated 10th July, 2001 passed by the learned Probate Court in the probate proceeding refusing to grant stay of the operation of order of appointment of Administrator Pendentalite, remains unchallenged before this Court.

12. Thus this Court holds that the petitioners' prayer for keeping the proceeding of the execution case in abeyance till the disposal of the petitioners' application for removal of the Administrator Pendentalite cannot be allowed. This Court thus does not find any illegality in the impugned

order warranting interference therewith. The revisional applications thus stand rejected.

Re: C.O. No. 2294 of 2010

13. Since the application for removal of the Administrator Pendentialite filed by the petitioners herein is pending for disposal before the learned Probate Court since April 2004, this Court disposes of this revisional application by making a request to the learned Probate Court to make an utmost endeavour to dispose of the petitioners' said application for removal of the Administrator Pendentialite as early as possible but preferably before the last working day before the winter vacation of the Court, without granting any unnecessary adjournment to any of the parties.

14. Since this Court is informed by the learned Advocate for the opposite party No.1 that the petitioners have not yet filed any written statement in the probate proceeding. The petitioners are directed to file their written statement in the probate proceeding positively within a period of three weeks from date. The learned Probate Court is also requested to expedite the disposal of the probate proceeding as far as possible without granting any unnecessary adjournment to any of the parties. The time limit which is fixed for the purpose of filing written statement by the petitioners as above, should be regarded as peremptorily fixed by this Court.

15. The revisional application is thus allowed.

16. The Urgent xerox certified copy of this order, if applied for, be given to the parties as expeditiously as possible.

(Jyotirmay Bhattacharya, J.)

