Asma Lateef vs Shabbir Ahmad on 12 January, 2024

Author: Dipankar Datta

Bench: Aravind Kumar, Dipankar Datta, B.R. Gavai

2024 INSC 36 REPORTA

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9695 OF 2013

ASMA LATEEF & ANR. …APPELLAN

VS.

SHABBIR AHMAD & ORS. …RESPONDENT

JUDGMENT

DIPANKAR DATTA, J.

The Challenge

1. Respondents 1 to 3 had filed an objection under section 47 of the Code of Civil Procedure, 1908 (“CPC”, hereafter) in an execution application filed before the Executing Court by the appellants. It was urged, based on the case pleaded therein, that the decree put to execution was inexecutable. The Executing Court, on 19th March, 2008, allowed the objections of the respondents 1 to 3, resulting in dismissal of the execution application.

16:43:20 IST Reason:

2. A revision was carried by the appellants from the order dated 19th March, 2008 before the Revisional Court which, vide its order dated 21st February, 2009, dismissed the objection filed by the respondents 1 to 3 and directed the Executing Court to proceed with the execution of the decree whilst treating such objection as non-maintainable.

3. The revisional order dated 21st February, 2009 was challenged by the respondents 1 to 3 in an application under Article 227 of the Constitution1 before the High Court of Judicature at Allahabad ("High Court", hereafter). The High Court, by its judgment and order dated 4th February, 2011, quashed the order passed by the Revisional Court and relegated the parties to the remedy of having their rights, in respect of the suit property, adjudicated by the appropriate forum.

4. This appeal, by special leave, registers a challenge to the said judgment and order of the High Court.

Factual Conspectus

5. Having regard to the nature and extent of controversy raised at the stage of execution, a decision on this appeal does not necessitate noting the facts triggering it and the rival contentions in great depth; however, we propose to briefly narrate the essential facts and submissions advanced by learned counsel for the parties before recording our conclusions.

6. The relevant facts, shorn of unnecessary details, are noticed hereunder:

> Civil Misc. Writ Petition No. 15236 of 2009 a. Appellants claimed that their great-grandmother, one Khatoon Jannat Bibi, had orally gifted them a certain property ("suit property", hereafter) on 16th August, 1988 whereafter a memorandum recording the same was also executed before the relevant tehsildar and that they were in peaceful possession of the same continuously.
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> b. Appellants, as plaintiffs, through their power of attorney holder, instituted a civil suit2 ("Suit", hereafter) before the Trial Court under section 38 of the Specific Relief Act, 1963 ("Specific Relief Act", hereafter) against three defendants - a son of Khatoon Jannat Bibi named Asad Ullah Kazmi [defendant no. 1] ("Kazmi", hereafter), Kazmi's son Samiullah [defendant no. 2] and one purported caretaker, Mr. Ram Chandra Yadav [defendant no. 3] in respect of the suit property, more particularly described in the plaint. Appellants prayed for a permanent injunction against the three defendants from interfering with the appellants' peaceful possession of the suit property.
>
> c. Kazmi, sometime in 1990, initiated proceedings for declaration of rights before the Sub-Divisional Officer under section 229B of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 ("UPZA & LR Act", hereafter); the said proceedings were, however, dismissed on 27th February, 1999 [4 (four) years after his death].
>
> d. In the Suit, an application for interim injunction was filed by the appellants. The Trial Court on 31st May, 1990, allowed the application and directed Kazmi and Samiullah to maintain status quo with regard to the suit property, and directed them not to interfere with the appellants' peaceful possession thereof.

e. Kazmi filed his written statement in the Suit on 5th December, 1990 where he inter alia contended that the Suit was barred by section 331 of the UPZA & LR Act and not maintainable before a civil court since the suit property was bhoomidhari land. It was further averred that the Suit was barred by section 41(h) of the Specific Relief Act; he also contended that his son Samiullah, the defendant no.2, had no concern with the suit property as long as his father (Kazmi) was alive and, hence, Samiullah had been wrongly impleaded as the defendant no.2. Kazmi also denied that Khatoon Jannat Bibi had the right to make any oral gift; inasmuch as she had only a life interest in the property, after her demise, the same devolved upon him exclusively.

f. It is to be noted that no written statement was filed on behalf of the other two defendants.

g. Upon the appellants moving an application under Rules 5 and 10 of Order VIII, CPC for pronouncement of judgment against Samiullah, the same was allowed by the Trial Court by its order dated 5th August, 19913, to which we propose to advert in course of our analysis.

h. Subsequently, the Trial Court, on 10th October, 1991, framed 11 (eleven) issues for consideration in the Suit, of which the very first one was on its competency to try the Suit.

i. Kazmi passed away on 15th July, 1995, after which his sons, Samiullah and Fariduddin [respondents 4 and 5 herein] transferred the suit property to the respondents 1 to 3 ("Purchasers", hereafter) vide a sale deed dated 3rd November, 1997. The Suit against Kazmi remained pending even after his demise, and none of his other heirs or legal representatives were brought on record as substituted defendants. The Suit against Kazmi was finally dismissed as abated on 27th April, 2009.

j. Appellants, as purported decree holders, filed an execution application4 before the Executing Court, on 16th December, 1997, praying that respondents 4 and 5 be punished for violating the order dated 5th August, 1991 and that the sale The decree was signed on 11th November, 1991.

Execution Application No. 58 of 1997 deed dated 3rd November, 1997 in favour of the Purchasers be declared invalid.

k. The Executing Court, vide an interim order passed on 16th January, 1998, restrained the Purchasers from interfering in any manner with the suit property.

l. Thereupon, the Purchasers filed their objection under section 47, CPC wherein they submitted, inter alia, that the order dated 5th August, 1991 was neither a judgment nor a decree and could not be executed.

m. Further, on 7th December, 2004, the appellants filed a contempt petition5 against the respondents alleging contempt of orders dated 31st May, 1990 and 5th August 1991, and the Executing Court order dated 16th January, 1998 by interfering with the appellants' possession of the

suit property.

n. These events were followed by the proceedings and the judgments/orders referred to in paragraphs 1 to 4 hereinabove. Impugned Judgment

7. The Purchasers invoked the appropriate jurisdiction of the High Court by challenging the order dated 21st February, 2009 of the Revisional Court. The High Court formulated two points for determination, viz.

> (i) whether the petitioners before it (respondents 1 to 3 herein), who are subsequent purchasers of the suit property, had any right to maintain an objection under section 47, CPC against execution of the Civil Misc Contempt Petition No. 62 of 2004 decree? and (ii) whether the order dated 5th August, 1991, passed in purported exercise of power under Rule 10 of Order VIII, CPC decreeing the suit against Samiullah alone is without jurisdiction and a nullity which is non est and inexecutable in nature? The High Court also framed an ancillary point as to whether the sale deed dated 23rd November, 1997 made by Samiullah in favour of the Purchasers was null and void.

8. While the two main points were answered in the affirmative, the ancillary point was answered in the negative. In course of rendering its judgment, the High Court held the order dated 5th August, 1991, and consequently the decree drawn on the basis thereof, to be beyond jurisdiction and a nullity. The High Court was also of the opinion that the revisional order dated 21st February, 2009 deserved to be set aside and the writ petition allowed, which it duly ordered. The parties were granted liberty to take recourse to available legal remedies to have determination of the title to the suit property adjudicated. Certain salient observations made by the High Court in the impugned judgment are summarised below for convenience:

> a. The order dated 5th August 1991, passed by the Trial Court, in the Suit, restrained only the defendant no.2 from interfering with the peaceful enjoyment of the appellants' rights relating to the suit property, but did not restrict the sons of Kazmi from dealing with or transferring the same.
>
> b. The transfer of the suit property was not in derogation of section 52 of the Transfer of Property Act, 1882 ("ToP Act", hereafter) and that the Purchasers could object to the appellants' execution application.
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> c. It is a cardinal principle that to succeed in a suit for permanent prohibitory injunction, the plaintiff must either establish title, proprietary rights over the suit property or prove possession over the same; however, the Trial Court had not found either the title of the plaintiffs or proved their possession in respect of the suit property.
>
> d. A court need not always pronounce judgment on the facts of a plaint or on those admitted due to non-filing of a written statement or want of specific denial. A court

has the option of pronouncing judgment only in cases where it deems it prudent; it also has the option to pass such an appropriate order as it seems fit.

e. A reading of Rules 1, 5 and 10 of Order VIII, CPC show that they concern themselves with only a single defendant to a suit and not several defendants. The Trial Court, instead, could have proceeded to hear the Suit ex parte under Rule 11 of Order IX, CPC since Kazmi's written statement was on the record. Hence, the Trial Court had no authority in law to decree the Suit against one defendant without adjudicating upon the controversy involved.

f. The order dated 5th August, 1991 was not a judgment within the scope of section 2(9) read with Rule 4(2) of Order XX, CPC and did not meet the basic requirements of a "judgment" and a decree as per section 2(9) and 2(2), CPC, respectively. Rival Contentions

9. Ms. Meenakshi Arora, learned senior counsel for the appellants while seeking our interference with the impugned judgment submitted as under:

a. The High Court fell into error by not appreciating the fact that the Executing Court exceeded its jurisdiction by going behind the order dated 5th August, 1991 and the decree that was drawn up in terms thereof, returning a finding that the same was not executable.

b. Samiullah had been provided ample opportunity to file his written statement but had failed to do so. In any event, the order dated 5th August, 1991 had not been challenged, and had attained finality.

c. The Trial Court, vide an interim order dated 31st May, 1990, had directed Kazmi and Samiullah to maintain status quo and not interfere with the peaceful possession of the suit property, by the appellants. The High Court had erroneously held that a perusal of the aforementioned order did not indicate any rider placed upon the parties from alienating the suit property, and that the sale deed dated 3rd November, 1997 was validly entered into.

d. The Purchasers were purchasers pendente lite and could not have purchased the suit property without leave of the Trial Court. The decisions in Surjit Singh and Others v. Harbans Singh and Others6 and Manohar Lal v. Ugrasen7 were referred to in support of the contentions that the transfer of property during pendency of proceedings and also in contravention of the interim order of injunction was impermissible.

e. Further, the Purchasers forcibly dispossessed the appellants of their peaceful possession of the suit property on 10 th October, 2004 in gross violation of the injunction order dated 16 th January, 1998 passed by the Executing Court.

> f. Reliance placed by the High Court on Balraj Taneja v. Sunil Madan8 was misplaced in the present case as this Court, in Balraj Taneja (supra), while holding that reasons must be given while decreeing a suit under Rule 10 of Order VIII, CPC, was seized of a matter where the decree was challenged in appellate proceedings. In the present case, the decree was sought to be declared inexecutable in execution proceedings, far beyond the reach of such a narrow jurisdiction. (1995) 6 SCC 50 (2010) 11 SCC 557 (1999) 8 SCC 396

10. Ms. Preetika Dwivedi, learned counsel for the Purchasers (respondents 1 to 3) in support of upholding of the impugned judgment, submitted as under:

> a. The order dated 5th August, 1991 passed by the Trial Court is not a judgment within the scope of section 2(9) read with Rule 4 of Order XX, CPC and the principle of law laid down in Balraj Taneja (supra) was rightly applied by the High Court.

b. The High Court had rightly granted all the parties liberty to have the title to the suit property adjudicated by the appropriate forum; hence, it could not be said that the appellants were prejudiced in any manner whatsoever. Further, any question relating to the title, and validity of the sale deed in favour of the Purchasers could be determined by the appropriate forum. c. At the time of purchase, the names of Kazmi's sons, i.e. respondents 4 and 5, were present in the land revenue records pertaining to the suit property, after which the Purchasers' names have been inserted through mutation.

d. As per the law laid down in Hukam Chand v. Om Chand9 and Nagubai Ammal v. B. Shama Rao10, the transfer of the suit property was not in violation of section 52, ToP Act since the statute did not put an absolute embargo on the transfer of such property pendente lite.

(2001) 10 SCC 715 AIR 1956 SC 593 Analysis

11. We have heard learned counsel for the parties and perused the impugned judgment as well as the other materials on record.

12. The sole question of law which arises for a decision in this appeal is:

> Whether the order dated 5th August, 1991 suffered from a jurisdictional error so grave that the decree drawn up subsequently is incapable of execution by the Executing Court and an objection that it is inexecutable was available to be raised under section 47, CPC by the respondents 1 to 3?

13. Prior to answering the above question, we consider it appropriate to examine the scope and extent of power exercisable under Rule 10 of Order VIII, CPC.

14. Rule 10 of Order VIII, CPC, used as the primary source of power by the Trial Court in passing the order dated 5th August, 1991 against Samiullah, postulates the procedure that could be adopted

when a party fails to present its written statement upon the same being called for by the court. Rule 10 reads as follows:

> "10. Procedure when party fails to present written statement called for by Court.— Where any party from whom a written statement is required under rule 1 or rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up."

15. We have no hesitation to hold that Rule 10 is permissive in nature, enabling the trial court to exercise, in a given case, either of the two alternatives open to it. Notwithstanding the alternative of proceeding to pronounce a judgment, the court still has an option not to pronounce judgment and to make such order in relation to the suit it considers fit. The verb 'shall' in Rule 10 [although substituted for the verb 'may' by the Amendment Act of 1976] does not elevate the first alternative to the status of a mandatory provision, so much so that in every case where a party from whom a written statement is invited fails to file it, the court must pronounce the judgment against him. If that were the purport, the second alternative to which 'shall' equally applies would be rendered otiose.

16. At this stage, we consider it apposite to take a quick look at Balraj Taneja (supra) to examine the scope of Rule 10 of Order VIII. Therein, this Court ruled that a court is not supposed to pass a mechanical judgment invoking Rule 10 of Order VIII, CPC merely on the basis of the plaint, upon the failure of a defendant to file a written statement. The relevant paragraphs of the judgment are reproduced below for convenience:

> "29. As pointed out earlier, the court has not to act blindly upon the admission of a fact made by the defendant in his written statement nor should the court proceed to pass judgment blindly merely because a written statement has not been filed by the defendant traversing the facts set out by the plaintiff in the plaint filed in the court. In a case, specially where a written statement has not been filed by the defendant, the court should be a little cautious in proceeding under Order 8 Rule 10 CPC. Before passing the judgment against the defendant it must see to it that even if the facts set out in the plaint are treated to have been admitted, a judgment could possibly be passed in favour of the plaintiff without requiring him to prove any fact mentioned in the plaint. It is a matter of the court's satisfaction and, therefore, only on being satisfied that there is no fact which need be proved on account of deemed admission, the court can conveniently pass a judgment against the defendant who has not filed the written statement. But if the plaint itself indicates that there are disputed questions of fact involved in the case regarding which two different versions are set out in the plaint itself, it would not be safe for the court to pass a judgment without requiring the plaintiff to prove the facts so as to settle the factual controversy. Such a case would be covered by the expression 'the court may, in its discretion, require any such fact to be proved' used in sub-rule (2) of Rule 5 of Order 8, or the expression

> 'may make such order in relation to the suit as it thinks fit' used in Rule 10 of Order 8." No doubt this decision was rendered considering that the verb used in the provision is 'may', but nothing substantial turns on it.

17. What emerges from a reading of Balraj Taneja (supra), with which we wholeheartedly concur, is that only on being satisfied that there is no fact which need to be proved on account of deemed admission, could the court pass a judgment against the defendant who has not filed the written statement; but if the plaint itself suggests involvement of disputed questions of fact, it would not be safe for the court to pass a judgment without requiring the plaintiff to prove the facts. Balraj Taneja (supra) also lays down the law that provision of Rule 10 of Order VIII, CPC is by no means mandatory in the sense that a court has no alternative but to pass a judgment in favour of the plaintiff, if the defendant fails or neglects to file his written statement.

18. If indeed, in a given case, the defendant defaults in filing written statement and the first alternative were the only course to be adopted, it would tantamount to a plaintiff being altogether relieved of its obligation to prove his case to the satisfaction of the court. Generally, in order to be entitled to a judgment in his favour, what is required of a plaintiff is to prove his pleaded case by adducing evidence. Rule 10, in fact, has to be read together with Rule 5 of Order VIII and the position seems to be clear that a trial court, at its discretion, may require any fact, treated as admitted, to be so proved otherwise than by such admission. Similar is the position with section 58 of the Indian Evidence Act, 1872. It must be remembered that a plaint in a suit is not akin to a writ petition where not only the facts are to be pleaded but also the evidence in support of the pleaded facts is to be annexed, whereafter, upon exchange of affidavits, such petition can be decided on affidavit evidence. Since facts are required to be pleaded in a plaint and not the evidence, which can be adduced in course of examination of witnesses, mere failure or neglect of a defendant to file a written statement controverting the pleaded facts in the plaint, in all cases, may not entitle him to a judgment in his favour unless by adducing evidence he proves his case/claim.

19. Having noted what Rule 10 of Order VIII postulates, the order dated 5th August, 1991 may be examined now since it is the genesis of the present litigation before us. The order made by the Trial Court on 5th August, 1991, reads as below:

> "68-C application moved by the plaintiffs under Order-8 Rule-5 (2) & (3) read with Rule 10 CPC. According to the plaintiff, Samiullah son of Asad Ullah Kazmi, defendant no. 1 has been impleaded as defendant no. 1 (sic, defendant no. 2) as he was also threatening to encroach the right of the plaintiff in the disputed property. He appeared through counsel and moved application and has also filed affidavits 50-C & 57-C but he failed to file any written statement. It is clear that so many date has been given for written statement and lastly it was 29.4.91, which was fixed for written statement and for issues, but the defendant has (sic, not) filed written statement and on this ground the plaintiff has moved the above application 68-C. The learned counsel for the plaintiff has argued that he has appeared through counsel and enough time has been given to him calling upon him to file the written statement, but he failed to file written statement. The case is covered by Order-8 Rule 10 C.P.C. The

> defendant no. 2 remained absent. In view of the above, I am of the opinion that it is fit case to proceed under Order-8 Rule 10 C.P.C.

Accordingly, the suit of the plaintiffs is decreed under Order-8 Rule 10 C.P.C. with cost against defendant no. 2. The defendant no. 2 is restrained not to interfere in the peaceful right and enjoyment of the plaintiff in respect of the disputed building, trees and other properties.

Fix 9.9.1991 for Issues."

20. In the present case, Kazmi had indeed filed his written statement dealing with the appellants' plaint before the order dated 5th August, 1991 was made. There, not only had Kazmi denied the assertions made in the plaint but he had also specifically objected to the maintainability of the suit itself before the Trial Court on the ground noted above. The Trial Court is presumed to be aware of the fact that the written statement of Kazmi was on record or else it would not have fixed the next date for settling 'issues'. In a situation where maintainability of the suit was in question and despite Samiullah not having filed his written statement, it was not a case where the Trial Court could simply pronounce judgment without even recording a satisfaction that it had the jurisdiction to try the suit and adjudicate the contentious issue(s), not to speak of pronouncing its verdict against Samiullah without assigning a single reason by treating the averments in the plaint to be admitted. The High Court rightly observed that even on pronouncement of judgment against Samiullah, the lis remained alive as against Kazmi and decision on the objection as to maintainability could have resulted in a contrary decision.

21. No tribunal, far less a civil court, in exercise of judicial power ought to play ducks and drakes with the rights of the parties. We are left to wonder what would have been the status of the rival claims if Kazmi had not passed away and accepting his objection, the Suit were dismissed on the ground of maintainability. In such a case, could such a dismissal be reconciled with the purported decree drawn up against Samiullah? The answer would have to be in the negative. Or, take the situation that has cropped up here. The suit has been dismissed qua Kazmi on 27th April, 2009 as abated. Although Ms. Arora had submitted in course of hearing that steps have since been successfully taken to set aside abatement and an assurance was given to file additional documents by 12th December, 2023 in support of such a submission, the additional documents e-filed beyond time do not reveal that (i) abatement has been set aside, (ii) the heirs/legal representatives substituted in place of Kazmi and (iii) the suit restored to its original file and number. The result is that the suit stands dismissed as against the principal defendant without any determination by the Trial Court on his objection that such court did not possess the jurisdiction to entertain and try the suit.

22. We are constrained to observe that it is to avoid such a situation of contradictory/inconsistent decrees that power under Rule 10 of Order VIII ought to be invoked with care, caution, and circumspection, only when none of several defendants file their written statements and upon the taking of evidence from the side of the plaintiff, if deemed necessary, the entire suit could be decided. As in the present case, where even one of several defendants had filed a written statement, it would be a judicious exercise of discretion for the court to opt for the second alternative in Rule 10

of Order VIII, CPC unless, of course, extraordinary circumstances exist warranting recourse to the first alternative. In the matter at hand, the filing of the written statement by Kazmi denying the averments made in the plaint warranted that the appellants' claims be proved by evidence, oral and/or documentary, instead of decreeing the suit against one of the defendants in a most slipshod manner.

23. We find close resemblance of the facts and circumstances under consideration in Swaran Lata Ghosh v. H.K. Banerjee11. A money suit instituted by the respondent before this Court was tried by the (1969) 1 SCC 709 High Court at Calcutta and after taking evidence the learned Single Judge on 17th August, 1962, passed the following order:

> "There will be a decree for Rs 15,000 with interest on judgment on Rs 15,000 at 6% per annum and costs. No interim interest allowed." Pursuant to that order a decree was drawn up. An appeal carried from the decree before the Division Bench failed. The Division Bench assigned sketchy reasons for the conclusion that the Trial Court "rightly decreed the suit" and disposed of the appeal with certain modification of the decree. While allowing the appeal and setting aside the decree passed by the high court and remanding the suit to the Court of first instance for trial according to law, this Court noted that Rules 1 to 8 of Order XX, CPC are, by the express provision contained in Rule 3(5) of Order XLIX, CPC inapplicable to a Chartered High Court in the exercise of its ordinary or extraordinary original civil jurisdiction and hence, a judge of a Chartered High Court was not obliged to record reasons in a judgment strictly according to the provisions contained in Rules 4(2) and 5 of Order XX, CPC. Notwithstanding such a provision, this Court proceeded to record in paragraph 6 as follows:
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> "6. Trial of a civil dispute in court is intended to achieve, according to law and the procedure of the court, a judicial determination between the contesting parties of the matter in controversy. Opportunity to the parties interested in the dispute to present their respective cases on questions of law as well as fact, ascertainment of facts by means of evidence tendered by the parties, and adjudication by a reasoned judgment of the dispute upon a finding on the facts in controversy and application of the law to the facts found, are essential attributes of a judicial trial. In a judicial trial, the Judge not only must reach a conclusion which he regards as just, but, unless otherwise permitted, by the practice of the court or by law, he must record the ultimate mental process leading from the dispute to its solution. A judicial determination of a disputed claim where substantial questions of law or fact arise is satisfactorily reached, only if it be supported by the most cogent reasons that suggest themselves to the Judge a mere order deciding the matter in dispute not supported by reasons is no judgment at all. Recording of reasons in support of a decision of a disputed claim serves more purposes than one. It is intended to ensure that the decision is not the result of whim or fancy, but of a judicial approach to the matter in contest: it is also intended to ensure adjudication of the matter according to law and the procedure established by law. A party to the dispute is ordinarily entitled to know the grounds

> on which the court has decided against him, and more so, when the judgment is subject to appeal. The appellate court will then have adequate material on which it may determine whether the facts are properly ascertained, the law has been correctly applied and the resultant decision is just. It is unfortunate that the learned trial Judge has recorded no reasons in support of his conclusion, and the High Court in appeal merely recorded that they thought that the plaintiff had sufficiently proved the case in the plaint."

24. However, there, it was an appellate decree which this Court was called upon to examine. We realise that we are not examining the correctness of a judgment/order arising from exercise of appellate jurisdiction by the High Court but a judgment approving an order on an objection under section 47, CPC, scope wherefor is limited.

25. Our real task is to ascertain whether the decree drawn up on the basis of the order dated 5th August, 1991 and put to execution by the appellants could have been objected to by the respondents 1 to 3 as inexecutable under section 47, CPC. Section 47, CPC, being one of the most important provisions relating to execution of decrees, mandates that an executing court shall determine all questions arising between the parties to the suit or their representatives in relation to the execution, discharge, or satisfaction of the decree and that such questions may not be adjudicated in a separate suit.

26. Reference to a couple of authorities on the scope and nature of section 47, CPC, at this stage, would not be inapt.

27. In Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman12, this Court was considering the scope of objection under section 47 of the CPC in relation to the executability of a decree. Therein, it was laid down that only such a decree could be the subject-matter of objection which is a nullity and not a decree which was erroneous either in law or on facts. Law was laid down in the following terms:

> "6. A court executing a decree cannot go behind the decree:
>
> between the parties or their representatives it must take the decree according to its tenor and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties.
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> 7. When a decree which is a nullity, for instance, where it is passed without bringing the legal representative on the record of a person who was dead at the date of the decree, or against a ruling prince without a certificate, is sought to be executed an objection in that behalf may be raised in a proceeding for execution. Again, when the decree is made by a court which has no inherent jurisdiction to make objection as to its validity may be raised in an execution proceeding if the objection appears on the face of the record: where the objection as to the jurisdiction of the Court to pass the decree does not appear on the face of the record and requires examination of the

> questions raised and decided at the trial or which could have been but have not been raised, the executing Court will have no jurisdiction to entertain an objection as to the validity of the (1970) 1 SCC 670 decree even on the ground of absence of jurisdiction....” (underlining ours, for emphasis)

28. In Dhurandhar Prasad Singh v. Jai Prakash University13, this Court further expounded the powers of a court under section 47, CPC in the following words:

> “24. The exercise of powers under Section 47 of the Code is microscopic and lies in a very narrow inspection hole. Thus it is plain that executing court can allow objection under Section 47 of the Code to the executability of the decree if it is found that the same is void ab initio and a nullity, apart from the ground that the decree is not capable of execution under law either because the same was passed in ignorance of such a provision of law or the law was promulgated making a decree inexecutable after its passing....” (underlining ours, for emphasis)

29. The legality of the order of the High Court, together with the order of the Executing Court that the former went on to uphold, has to be tested having regard to the settled position of law as noticed above and bearing in mind that the powers of an executing court, though narrower than an appellate or revisional court, can be exercised to dismiss an execution application if the decree put to execution is unmistakably found to suffer from an inherent lack of jurisdiction of the court that made the same rendering it a nullity in the eye of law.

30. For reasons more than one, we propose to hold that the Executing Court and the High Court were right in holding that the objection raised by the respondents 1 to 3 to the executability of the decree was well-founded.

(2001) 6 SCC 534

31. What appears to be of significance in the light of the decisions referred to above is the importance of the legal term ‘jurisdiction’, and the question whether the Trial Court did have the jurisdiction to pass the order it did on 5th August, 1991 followed by the decree signed on 11th November, 1991.

32. What does ‘jurisdiction’ mean? In the ensuing discussion, we feel inclined to draw guidance from certain decisions of ancient vintage which have stood the test of time.

33. The wisdom of Sir Ashutosh Mukherjee, A.C.J., speaking for a Full Bench of the High Court at Calcutta in Hirday Nath Roy v. Ramachandra Barna Sarma14, more than a century back, profitably assists us in understanding what is meant by ‘jurisdiction’, ‘lack of jurisdiction’ and ‘error in the exercise of jurisdiction’. The relevant passage reads as under:

> “...An examination of the cases in the books discloses numerous attempts to define the term ‘jurisdiction’, which has been stated to be ‘the power to hear and determine

issues of law and fact'; 'the authority by which judicial officers take cognizance of and decide causes'; 'the authority to hear and decide a legal controversy'; 'the power to hear and determine the subject- matter in controversy between parties to a suit and to adjudicate or exercise any judicial power over them'; 'the power to hear, determine and pronounce judgment on the issues before the Court'; 'the power or authority which is conferred upon a Court by the legislature to bear and determine causes between parties and to carry the judgments into effect'; 'the power to enquire into the facts, to apply the law, to pronounce the judgment and to carry it into execution. ... This jurisdiction of the Court may be qualified or restricted by a variety of circumstances. Thus, the jurisdiction may have to be considered with reference to place, value, and nature of the 1920 SCC OnLine Cal 85 : ILR LXVIII, Cal 138 subject-matter. ... This classification into territorial jurisdiction, pecuniary jurisdiction and jurisdiction of the subject-matter is obviously of a fundamental character. Given such jurisdiction, we must be careful to distinguish exercise of jurisdiction from existence of jurisdiction; for fundamentally different are the consequences of failure to comply with statutory requirements in the assumption and in the exercise of jurisdiction. The authority to decide a cause at all and not the decision rendered therein is what makes up jurisdiction; and when there is jurisdiction of the person and subject-matter, the decision of all other questions arising in the case is but an exercise of that jurisdiction. The extent to which the conditions essential for creating and raising the jurisdiction of a Court or the restraints attaching to the mode of exercise of that jurisdiction should be included in the conception of jurisdiction itself is sometimes a question of great nicety...But the distinction between existence of jurisdiction and exercise of jurisdiction has not always been borne in mind and this has sometimes led to confusion. ... We must not thus overlook the cardinal position that in order that jurisdiction may be exercised, there must be a case legally before the Court and a hearing as well as a determination. A judgment pronounced by a Court without jurisdiction is void, subject to the well-known reservation that when the jurisdiction of a Court is challenged, the Court is competent to determine the question of jurisdiction, though the result of the enquiry may be that it has no jurisdiction to deal with the matter brought before it.

*** Besides the cases mentioned therein, reference may particularly be made to the judgment of Srinivas Aiyangar, J., in Tuljaram v. Gopala [32 Mad. L.J. 434; 21 Mad. L.J. 220 (1916).] , where the true rule was stated to be that if a Court has jurisdiction to try a suit and has authority to pass orders of a particular kind, the fact that it has passed an order which it should not have made in the circumstances of that litigation, does not indicate total want or loss of jurisdiction so as to render the order a nullity." (underlining ours, for emphasis)

34. Hirday Nath Roy (supra) found approval in Official Trustee v.

Sachindra Nath Chatterjee15, a co-ordinate Bench decision of this AIR 1969 SC 823 Court. The relevant observations of this Court in Sachindra Nath Chatterjee (supra) are reproduced below:

> "12. It is plain that if the learned judge had no jurisdiction to pass the order in question then the order is null and void. It is equally plain that if he had jurisdiction to pronounce on the plea put forward before him the fact that he made an incorrect order or even an illegal order cannot affect its validity. ...
>
> 15. *** it is clear that before a Court can be held to have jurisdiction to decide a particular matter it must not only have jurisdiction to try the suit brought but must also have the authority to pass the orders sought for. It is not sufficient that it has some jurisdiction in relation to the subject-matter of the suit. Its jurisdiction must include the power to hear and decide the questions at issue, the authority to hear and decide the particular controversy that has arisen between the parties. ..." (underlining ours, for emphasis)

35. The essence really is that a court must not only have the jurisdiction in respect of the subject matter of dispute for the purpose of entertaining and trying the claim but also the jurisdiction to grant relief that is sought for. Once it is conceded that the jurisdiction on both counts is available, it is immaterial if jurisdiction is exercised erroneously. An erroneous decision cannot be labelled as having been passed 'without jurisdiction'. It is, therefore, imperative that the distinction between a decision lacking in inherent jurisdiction and a decision which suffers from an error committed in the exercise of jurisdiction is borne in mind.

36. Moving on to decisions of not too distant an origin, we notice that this Court in Rafique Bibi v. Sayed Waliuddin16 whilst relying on (2004) 1 SCC 287 Vasudev Dhanjibhai Modi (supra), has made valuable observations as to the circumstances where an order passed could be regarded as a nullity. The relevant observations made in Rafique Bibi (supra) read thus:

> "6. What is 'void' has to be clearly understood. A decree can be said to be without jurisdiction, and hence a nullity, if the court passing the decree has usurped a jurisdiction which it did not have; a mere wrong exercise of jurisdiction does not result in a nullity. The lack of jurisdiction in the court passing the decree must be patent on its face in order to enable the executing court to take cognizance of such a nullity based on want of jurisdiction, else the normal rule that an executing court cannot go behind the decree must prevail.
>
> 7. Two things must be clearly borne in mind. Firstly, 'the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be 'a nullity' and 'void' but these terms have no absolute sense: their meaning is relative, depending upon the court's willingness to grant relief in any particular situation. If this principle of illegal relativity is borne in mind, the law can be made to operate justly and reasonably in cases where the doctrine of ultra vires, rigidly applied, would produce unacceptable results." (Administrative Law, Wade and Forsyth, 8th Edn., 2000, p. 308.) ...

> 8. A distinction exists between a decree passed by a court having no jurisdiction and consequently being a nullity and not executable and a decree of the court which is merely illegal or not passed in accordance with the procedure laid down by law.

A decree suffering from illegality or irregularity of procedure, cannot be termed inexecutable by the executing court; the remedy of a person aggrieved by such a decree is to have it set aside in a duly constituted legal proceedings or by a superior court failing which he must obey the command of the decree. A decree passed by a court of competent jurisdiction cannot be denuded of its efficacy by any collateral attack or in incidental proceedings." (underlining ours, for emphasis)

37. Also, a reading of Rafique Bibi (supra) makes it clear that the lack of jurisdiction must be patent on the face of the decree to enable an executing court to conclude that the decree was a nullity. Hence, it is clear that all irregular or wrong decrees would not necessarily be void.

An erroneous or illegal decision, which was not void, could not be objected in execution or incidental proceedings. This dictum was also affirmed by a Bench of 3 (three) Hon'ble Judges of this Court in Balvant N. Viswamitra v. Yadav Sadashiv Mule17.

38. What follows from a conspectus of all the aforesaid decisions is that jurisdiction is the entitlement of the civil court to embark upon an enquiry as to whether the cause has been brought before it by the plaintiff in a manner prescribed by law and also whether a good case for grant of relief claimed been set up by him. As and when such entitlement is established, any subsequent error till delivery of judgment could be regarded as an error within the jurisdiction. The enquiry as to whether the civil court is entitled to entertain and try a suit has to be made by it keeping in mind the provision in section 9, CPC and the relevant enactment which, according to the objector, bars a suit. Needless to observe, the question of jurisdiction has to be determined at the commencement and not at the conclusion of the enquiry.

39. Although not directly arising in the present case, we also wish to observe that the question of jurisdiction would assume importance even at the stage a court considers the question of grant of interim relief. Where interim relief is claimed in a suit before a civil court and the party to be affected by grant of such relief, or any other party to (2004) 8 SCC 706 the suit, raises a point of maintainability thereof or that it is barred by law and also contends on that basis that interim relief should not to be granted, grant of relief in whatever form, if at all, ought to be preceded by formation and recording of at least a prima facie satisfaction that the suit is maintainable or that it is not barred by law. Such a satisfaction resting on appreciation of the averments in the plaint, the application for interim relief and the written objection thereto, as well as the relevant law that is cited in support of the objection, would be a part of the court's reasoning of a prima facie case having been set up for interim relief, that the balance of convenience is in favour of the grant and non-grant would cause irreparable harm and prejudice. It would be inappropriate for a court to abstain from recording its prima facie satisfaction on the question of maintainability, yet, proceed to grant protection pro tem on the assumption that the question of maintainability has to be decided as a preliminary issue under Rule 2 of Order XIV, CPC. That could amount to an improper exercise of power. If the court is of the opinion at the stage of hearing the application for interim relief that the

suit is barred by law or is otherwise not maintainable, it cannot dismiss it without framing a preliminary issue after the written statement is filed but can most certainly assign such opinion for refusing interim relief. However, if an extraordinary situation arises where it could take time to decide the point of maintainability of the suit and non- grant of protection pro tem pending such decision could lead to irreversible consequences, the court may proceed to make an appropriate order in the manner indicated above justifying the course of action it adopts. In other words, such an order may be passed, if at all required, to avoid irreparable harm or injury or undue hardship to the party claiming the relief and/or to ensure that the proceedings are not rendered infructuous by reason of non-interference by the court.

40. Turning to the facts of the present case, Kazmi had challenged the maintainability of the Suit in the written statement filed by him before the Trial Court contending inter alia that the suit property was bhoomidhari land owing to which the Suit was barred by section 331 of UPZA & LR Act as well as it was barred under section 41(h) of the Specific Relief Act and, thus, not maintainable before the civil court. What was required of the Trial Court in such situation was to record a satisfaction, at least prima facie, that the Suit was maintainable and then proceed to pass such orders as it considered proper in the circumstances. A glance at the order dated 5th August, 1991, is sufficient to inform us that the Trial Court, in no words whatsoever, made any decision on whether it was entitled in law to decide the plea before it, prior to decreeing the Suit against Samiullah under Rule 10 of Order VIII, CPC. The question of competence to try the Suit, we have found, was the first of several issues arising for decision in the Suit and despite such looming presence of an important issue before the Trial Court which, if examined and answered in favour of Kazmi, would have ousted jurisdiction, it preferred not to wait and proceeded to decree the same against Samiullah without a whisper on its competency to do the same.

41. The legal and factual position of the present case having been noted above, we hold that a decision rendered by a court on the merits of a controversy in favour of the plaintiff without first adjudicating on its competence to decide such controversy would amount to a decision being rendered on an illegal and erroneous assumption of jurisdiction and, thus, be assailable as lacking in inherent jurisdiction and be treated as a nullity in the eye of law; as a logical corollary, the order dated 5th August, 1991 is held to be ab initio void and the decree drawn up based thereon is inexecutable.

42. There is one other reason which we wish to assign as a ground for upholding the order of the Executing Court and the High Court.

43. Reference may once again be made to Balram Taneja (supra) where the law has been reiterated succinctly, as follows:

> "41. There is yet another infirmity in the case which relates to the 'judgment' passed by the Single Judge and upheld by the Division Bench.
>
> 42. 'Judgment' as defined in Section 2(9) of the Code of Civil Procedure means the statement given by the Judge of the grounds for a decree or order. What a judgment

> should contain is indicated in Order 20 Rule 4(2) which says that a judgment 'shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision'. It should be a self-contained document from which it should appear as to what were the facts of the case and what was the controversy which was tried to be settled by the court and in what manner. The process of reasoning by which the court came to the ultimate conclusion and decreed the suit should be reflected clearly in the judgment.
>
> 43. ***
>
> 44. ***
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> 45. Learned counsel for Respondent 1 contended that the provisions of Order 20 Rule 4(2) would apply only to contested cases as it is only in those cases that 'the points for determination' as mentioned in this rule will have to be indicated, and not in a case in which the written statement has not been filed by the defendants and the facts set out in the plaint are deemed to have been admitted. We do not agree.

Whether it is a case which is contested by the defendants by filing a written statement, or a case which proceeds ex parte and is ultimately decided as an ex parte case, or is a case in which the written statement is not filed and the case is decided under Order 8 Rule 10, the court has to write a judgment which must be in conformity with the provisions of the Code or at least set out the reasoning by which the controversy is resolved.

46. *** Even if the definition were not contained in Section 2(9) or the contents thereof were not indicated in Order 20 Rule 4(2) CPC, the judgment would still mean the process of reasoning by which a Judge decides a case in favour of one party and against the other. In judicial proceedings, there cannot be arbitrary orders. A Judge cannot merely say 'suit decreed' or 'suit dismissed'. The whole process of reasoning has to be set out for deciding the case one way or the other. This infirmity in the present judgment is glaring and for that reason also the judgment cannot be sustained." (underlining ours, for emphasis) We concur with the observation that a judgment, as envisaged in section 2(9), CPC, should contain the process of reasoning by which the court arrived at its conclusion to resolve the controversy and consequently to decree the suit.

44. It is indubitable that a "judgment", if pronounced by a court under Rule 10 of Order VIII, CPC, must satisfy the requirements of Rule 4(2) of Order XX, CPC, and thereby conform to its definition provided in section 2(9) thereof.

45. Further, even a cursory reading of Rule 10 of Order VIII, CPC impresses upon us the fundamental mandate that a "decree" shall follow a "judgment" in a case where the court invokes power upon failure of a defendant to file its written statement. It is, therefore, only a "judgment" conforming to the provisions of the CPC that could lead to a "decree" being drawn up. As is manifest on the face of the record of the present case, apart from the ipse dixit of the Trial Court that the case is fit for being proceeded against under Rule 10 of Order VIII and that the suit qua Samiullah ought

to be decreed with the injunctive order, no ingredients that a “judgment” should contain as per the CPC appear in the order dated 5th August, 1991.

46. We deem it fit to advert to the fine words of wisdom imparted to us by Hon’ble P.B. Mukharji, CJ., in ‘The New Jurisprudence: The Grammar of Modern Law’ where the learned author says:

> "The supreme requirement of a good judgment is reason. Judgment is of value on the strength of its reason. The weight of a judgment, its binding character or its persuasive character depends on the presentation and articulation of reason. Reason, therefore, is the soul and spirit of a good judgment.”

47. It is one of the cardinal principles of the justice delivery system that any verdict of a competent judicial forum in the form of a judgment/order, that determines the rights and liabilities of the parties to the proceedings, must inform the parties what is the outcome and why one party has succeeded and not the other - the ‘why’ constituting the reasons and ‘what’ the conclusion. Apart from anything else, insistence of the requirement for the reason(s) to support the conclusion guarantees application of mind by the adjudicator to the materials before it as well as provides an avenue to the unsuccessful party to test the reasons before a higher court.

48. All civil courts in the country have to regulate their judicial work in accordance with the terms of the provisions of the CPC. Any egregious breach or violation of such provisions, including the one noticed here, would be ultra vires.

49. Let us now examine whether there is a ‘decree’ within the scope of section 2(2), CPC. Section 2(2) is reproduced hereunder:

> (2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 144, but shall not include -
>
> (a) any adjudication from which an appeal lies as an appeal from an order, or
>
> (b) any order of dismissal for default.

(underlining ours, for emphasis)

50. The decree signed by the Trial Court on 11th November, 1991 is not on record. Nevertheless, at the cost of repetition, we record that examination of the order dated 5th August, 1991 does not reveal any adjudication leading to determination of the rights of the parties in relation to any of the matters in controversy in the suit and, therefore, the decree since drawn up is not a formal expression of an adjudication/determination since there has been no adjudication/determination so as to conform to the requirements of a decree within the meaning of section 2(2). In this regard, we

express our concurrence with both the High Court and the Executing Court that there is no decree at all in the eye of law.

51. We, therefore, hold that a decree that follows a judgment or an order (of the present nature) would be inexecutable in the eyes of law and execution thereof, if sought for, would be open to objection in an application under section 47, CPC.

Conclusion

52. For the reasons mentioned above, we conclude that the Trial Court had no authority to decree the suit against Samiullah in exercise of its power under Rule 10 of Order VIII, CPC.

53. There is no reason to interfere with the judgment and order of the High Court under challenge. It is upheld and the appeal, accompanied by any pending applications, stands dismissed. Parties shall bear their own costs.

54. It is, however, made clear that no part of the observations of this Court, or of the High Court or of those below, be treated as an expression of opinion in any particular matter or on any factual aspect whatsoever. Determination of the title to the suit property, adjudication on the validity of the sale deed in favour of the Purchasers, or decision on any other contentious issue are left open for a forum of competent jurisdiction to embark upon, if approached by any of the parties.

55. We are aware that pursuant to Interim Application No. 4 of 2013 moved by the appellants, this Court had appointed one Mr. Suryanarayana Singh as the Court Receiver in respect of the property ("Court Receiver", hereafter) on 14th March, 2014. The Court Receiver already appointed shall stand discharged forthwith. Unpaid remuneration, if any, shall be borne by the appellants.

56. However, the Court Receiver shall provide accounts of income and expenditure in respect of the suit property to the appellants as well as the respondents 1 to 3 within two months and any claim of either of the parties would be open to be raised and addressed in accordance with law.

.....J. [B.R. GAVAI] .....J. [DIPANKAR DATTA] .....J. [ARAVIND KUMAR] NEW DELHI;

12TH JANUARY, 2024.