

Bahadur Singh & Anr vs Muni Subrat Dass & Anr on 16 October, 1968

Equivalent citations: AIRONLINE 1968 SC 76, AIRONLINE 1968 SC 45

PETITIONER:

BAHADUR SINGH & ANR.

Vs.

RESPONDENT:

MUNI SUBRAT DASS & ANR.

DATE OF JUDGMENT:

16/10/1968

BENCH:

ACT:

Code of Civil Procedure (Act 5 of 1908) s. 47--Decree in terms of Arbitration Award passed--Objection to validity, if can be raised. Indian Arbitration Act (10 of 1940) ss. 14, 17, 31, 32 and 33--Delhi and Ajmer Rent Control Act (38 of 1952) s. 13--Decree contravening s. 13, if can be enforced.

HEADNOTE:

The tenants occupying the ground floor of a building set up a workshop therein. According to the landlord's son-M, who resided in the first floor, the workshop was a nuisance and caused him great annoyance. M and tenants agreed to refer the dispute to arbitration. The landlord was not a party to the agreement. The award directed that the tenants would run workshop up to certain time and thereafter remove the machinery. and on that day give vacant possession of the ground floor to the landlord. The award was signed by the arbitrators, the tenants, and M, and it was attested by the landlord. It was filed in Court under s. 14 of the Arbitration Act. The tenants and M stated in Court that they had no objections against the award. The Court pronounced judgment according to the award and decree followed. On the expiry of the date fixed for removing the machinery and for vacating the premises, M and the landlord jointly applied for the execution of the decree. The tenants objected under s. 47, Code of Civil Procedure to the execution contending that (i) the award was beyond the scope of the reference and was invalid and the decree based on the invalid award was void; (ii) the decree was passed in

contravention of the Delhi and Ajmer Rent Control Act, 1952 and was void; and (iii) the landlord could not execute the decree.

HELD: (i) The award was filed in Court under s. 14 of the Arbitration Act and on notice to the tenants and in their presence a decree was passed according to the award under s. 17. It was not open to the tenants then to take the objection that the award was in excess of the authority on the arbitrators or was otherwise invalid. Having regard to the scheme of ss, 14 to 17 and 31 to 33 all questions regarding the validity of the award had to be determined by the Court in which the award was filed and by no other Court. An award which is invalid on any ground can be set aside under s. 30. After a decree is passed on the award it is not open to the parties to the reference to raise any objection as to the validity of the award. As between them the decree conclusively determines that the award is valid. Nor can the decree be pronounced to be a nullity on the ground that the award was invalid. [435 E--G]

Rabindra Deb Manna v. Jogendra Deb Manna A.I.R. 1923 Cal. 410, and Shib Kristo Daw v. Sottish Chandra Dutt (1912) 39 Cal. 822. approved.

(ii) The decree for delivery of possession to the landlord was a nullity and could not be enforced in execution. Section 13(1) of the Delhi and Ajmer Rent Control Act, 1952 prohibited the Court, from passing a decree or order for recovery of possession of any premises in

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favour of a landlord against a tenant except in such a suit or proceeding instituted by the landlord against the tenant for recovery of possession on one of the grounds stated therein, and unless the Court was satisfied that a ground of eviction existed. The decree in the present case was on the face of it one for recovery of possession of the premises in favour of a landlord against a tenant. The Court passed the decree according to an award under s. 17 of the Arbitration Act, 1940 in a proceeding to which the landlord was not a party without satisfying itself that a ground of eviction existed. [436 C--E]

Peachey Property Corpn. vs. Robinson [1966] 2 All E.R.981, applied.

(iii) The decree in so far as it directed the removal of the machinery from the premises was clearly valid and separable from the rest of the decree and could be executed by M.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil. Appeals Nos. 2464- and 2465 of 1966.

Appeal from the judgment and order dated April 8, 1964 of the Punjab High Court, Circuit Bench at Delhi in Letters Patent Appeal No. 75-D of 1962.

M.C. Chagla and Lily Thomas, for the appellants (in C.A. No. 2464 of 1966) and the respondents (in C.A. Nos. 2465 of 1966).

A.K. Sen and 1. N. Shroff, for the respondents (in C.A. E No. 2464 of 1966) and the appellants (in C.A. No. 2465 of 1966).

The Judgment of the Court was delivered by Bachawat, J. One Mehtab Singh, the landlord, is the owner of the premises No. 279, situate in Dariba Kalan, Delhi. His son Muni Subrat Dass resides on the first floor while the ground F floor is in the occupation of the tenants, Bahadur Singh and Daryao Singh where they set up a workshop and installed machinery for manufacturing purposes. According to Muni Subrat the workshop was a nuisance and caused him great annoyance. He made a number of complaints to the Municipal Committee for stoppage of the nuisance. On June 10, 1954, Muni Subrat G and the tenants agreed in writing to refer the disputes between them to the arbitration of two named arbitrators. The landlord was not a party to the agreement. The arbitrators made their award on July 14, 1954. The award directed that

(i) Muni Subrat would withdraw the applications pending before. The Municipal Committee; (ii) the tenants would be at liberty to run the workshop during the day time upto December 31, 1957; (iii) on January 1, 1958, the tenants would remove the machinery; (iv) on the same date they would give vacant possession of the ground floor to the landlord and (v) the tenants would pay rent to landlord for the period of their occupation. The award was signed by the arbitrators and the parties to the reference and was attested by the landlord. It was filed in Court under s. 14 of the Arbitration Act, 1940. On August 26, 1954, the tenants and Muni Subrat stated in Court that they had no objections against the award. On the same date the Court pronounced judgment according to the award and a decree followed accordingly. On August 23, 1958 Muni Subrat and the landlord jointly applied for execution of the decree for delivery of possession of the premises. In anticipation of the application for execution of the decree, on January 9, 1958 the tenants filed an application under sec. 47 of the Code of Civil Procedure raising the following objections to the execution of the decree as to the delivery of possession of the premises to the landlord:

(i) the award was beyond the scope of the reference and was invalid and the decree based on the invalid award was void;

(ii) the decree was passed in contravention of the Delhi and Ajmer Rent Control Act, 1952 (Act No. 38 of 1952) and was void; and (iii) the landlord could not execute the decree.

The Subordinate Judge, First Class, Delhi, dismissed the objection. He held that (i) that the objection that the award was without jurisdiction could not be raised under sec. 47; (ii) the decree was not in contravention of the Rent Act; and (iii) the landlord was entitled to execute the decree. On appeal, the Additional Senior Sub-Judge, Delhi, held that (i) the question as to the validity of the

award could not be agitated in the execution proceedings;

(ii) the decree for eviction was passed in contravention of the Rent Act and was void; (iii) the appeal against the order allowing the landlord to execute the decree was incompetent and (iv) Muni Subrat was entitled to execute the decree for removal of the machinery but he could not execute the decree for eviction. In the result, he dismissed the appeal in part so far 'as it was directed against the landlord, allowed the appeal in part against Muni Subrat and declared that he could get the machinery removed but he could not claim eviction. The tenants and the decree-holders filed two separate appeals in the Punjab High Court at Delhi. Gurdev Singh 1. held that (i) the first appeal filed against the order in favour of the landlord was competent; (ii) the decree for eviction did not contravene the provisions of the Rent Act and (iii) the landlord was entitled to execute the decree for eviction. In the result, he accepted the decree-holder's appeal and dismissed the tenant's appeal. The tenants filed an appeal under clause 10 of the Letters Patent. A Divisional Bench of the High Court held that (1) the objection to the validity of the award could not be entertained in the execution proceedings; (2) the decree directing delivery of possession of the premises to the landlord was passed in contravention of the Rent Act; (3) neither the landlord nor Muni Subrat could enforce that part of the decree; (4) the decree directing removal of the machinery was 'separable and was void and Muni Subrat was entitled to execute it. In the result, the Divisional Bench allowed the appeal and restored the order of the Additional Senior Sub-Judge, Delhi. In passing this order the Bench overlooked that the Senior-Sub-Judge had dismissed the appeal against the landlord as incompetent. Having regard to the fact that the appeal against the landlord was competent, the Bench should have also set aside the order favouring the landlord. The present appeals have been filed by the tenants as also by the landlord and Muni Subrat after obtaining certificates from the High Court.

The following points arise for determination in these appeals, (1) Can the objection as to the 'validity of the award be raised after a decree is passed' on the award, and can the decree be pronounced to be a nullity on the ground that it was based on an invalid award; (2) Is the decree directing the tenants to deliver possession of the premises to the landlord a nullity on the ground that it was passed in contravention of the Rent Act; (3) Is this portion of the decree enforceable either by the landlord or by Muni Subrat; and (4) Is the decree so far as it directs removal of the machinery valid and enforceable by Muni Subrat. The award was filed in Court under s. 14 of the Arbitration Act and on notice to the tenants and in their presence a decree, was passed according to the award under s. 17. It is not Open to the tenants now to take the objection that the award was in excess of the 'authority of the arbitrators or was otherwise invalid. Having regard to the scheme of ss. 14 'to 17 and 31 to 33 all' questions regarding the validity of the award had to be determined by the Court in which the award was filed and by no other Court. An award which is invalid on any ground can be set aside under s. 30. After a decree is passed on the award it is not 'open to the parties to the reference to raise any' objection as to 'the validity' of the award. As between them the decree conclusively determines that the award is valid. Nor can the decree be pronounced to be a nullity on the ground that 'the award was invalid. A decree passed on an invalid award in arbitrations in suits under the second schedule to the Code of Civil Procedure, 1908, stood on the same footing, see Rabindra Deb Manna v. Jogendra Deb Manna(1) where Rankin, '1. 'observed: "An award made out of time, Or otherwise 'invalid, is no longer a nullity it is 'liable to be set aside by the Court, but, if not

set aside, a decree made for its enforcement is not without jurisdiction, *Shib Kristo Daw v. Satish Chandra Dutt* (1912) 39 Cal. 822."

The next question is whether the decree directing the tenant to deliver possession-of the premises to the landlord was. passed A.I.R. 1923 Cal. 410, 413.

in contravention of s. 13 (1) of the Delhi and Ajme Rent Control Act, 1952. That sub-section provided that:

"Notwithstanding anything to the contrary contained in any other law or any contract, no decree or order for the recovery of possession of any premises shall be passed by any Court in favour of the landlord against any tenant (including a tenant whose tenancy is terminated): Provided that nothing in this sub-section shall apply to any suit or other proceeding for such recovery of possession if the Court is satisfied.." Then followed a catalogue of grounds on which the decree for recovery of possession could be passed. The other sub-sections to s. 13 showed that a decree or order could be passed on one of those grounds in a suit or proceeding instituted by a landlord against a tenant. Section 13 (1) prohibited the Court from passing a decree or order for recovery of possession of any premises in favour of a landlord against a tenant except in such a suit or proceeding and unless the Court was satisfied that a ground of eviction existed. Now the decree in the present case is on the face of it one for recovery of possession of the premises in favour of a landlord against a tenant. The Court passed the decree according to an award under s. 17 of the Arbitration Act, 1940 in a proceeding to which the landlord was not a party without satisfying itself that a ground of eviction existed. On the plain wording of s. 13 (1) the Court was forbidden to pass the decree. The decree is a nullity and cannot be enforced in execution. The contention that a decree passed in contravention of s. 13 (1) is a nullity is supported by the decision in *Peachey Property Corpn. v. Robinson*(1). In that case the landlords issued a writ to recover possession of a flat let to tenants who resided there for non-payment of rent. No appearance was entered and judgment was signed in default of appearance. On an application for leave to issue a writ for possession, the Court held that the judgment was a nullity as it was given without any determination that it was reasonable to do so in contravention of s. 3 (1) of the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933. As the decree was a nullity the Court refused to issue a writ for possession. Winn, L.J. said :--

"Accordingly, the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, s. 3(1) was made to apply to these premises and that sub-section provided:

'No Order or judgment for the recovery. of possession of any dwelling house to which the principal Acts apply or for the ejection of a tenant therefrom shall be (1) [1966] 2 All E.R. 981, 983.

made or given unless the Court considers it reasonable to make such an order or give such a judgment..

and.. "

One or other of two additional conditions is satisfied. It is perfectly plain from what I have said that before the judgment in default of appearance was entered no court had determined whether it was reasonable to make such an order or give such a judgment. In my view, therefore, by express force of that section the judgment in default of appearance here was a nullity. It was, according to its terms, a judgment for recovery of possession of these premises, and that is something which the section prohibits unless there has been a prior determination by the court that it was reasonable to give such a judgment."

As the decree for the delivery of possession of the premises to the landlord is a nullity it cannot be enforced or executed either by the landlord or by the landlord's son Muni Subrat. The decree in so far as it directs the removal of the machinery from the premises is clearly valid and separable from the rest of the decree and may be executed by Muni Subrat.

In the result, it is declared that (a) the objections as to the validity of the award cannot be entertained in the execution proceedings; (b) the decree in so far, as it directs delivery of possession of the premises to the landlord is a nullity and cannot be executed either by Muni Subrat or by Mehtab Singh and (c) the decree in so far as it directs removal of the machinery is valid and may be executed by Muni Subrat. Subrat to the declarations mentioned above the appeals are dismissed. There will be no order as to the costs in this Court.

Y.P.

Appeals dismissed.