

## **Rafique Bibi (D) By Lrs vs Syed Waliuddin (D) By Lrs. And Ors on 28 August, 2003**

**Equivalent citations: AIR 2003 SUPREME COURT 3789, 2004 (1) SCC 287, 2003 AIR SCW 4332, 2003 (5) SLT 127, 2004 (1) UJ (SC) 130, 2004 UJ(SC) 1 130, 2003 (8) ACE 1, (2003) 5 ALL WC 4596, 2003 (6) SCALE 785, 2003 SCFBRC 483, (2004) 3 ALLMR 828 (SC), 2004 (1) ALL CJ 610, (2003) 12 ALLINDCAS 148 (SC), (2003) 1 GAU LT 435, (2003) 4 ICC 579, (2003) 2 WLC(SC)CVL 612, (2003) 3 CURCC 259, (2003) 11 INDLD 102, (2003) 1 GAU LR 296, (2003) 3 CIVILCOURTC 710, (2004) 2 MAH LJ 590, (2003) 2 RENCJ 59, (2003) 2 RENCRC 297, (2003) 2 RENTLR 441, (2003) 6 SUPREME 300, (2003) 6 SCALE 785, (2003) 53 ALL LR 620, (2004) 3 BOM CR 457**

**Author: R.C. Lahoti**

**Bench: R.C. Lahoti, Ashok Bhan**

CASE NO.:

Appeal (civil) 6799 of 2003

PETITIONER:

RAFIQUE BIBI (D) BY LRS.

RESPONDENT:

SYED WALIUDDIN (D) BY LRS. AND ORS.

DATE OF JUDGMENT: 28/08/2003

BENCH:

R.C. LAHOTI & ASHOK BHAN

JUDGMENT:

JUDGMENT 2003 Supp(3) SCR 100 The Judgment of the Court was delivered by R.C. LAHOTI, J. Leave granted.

The suit property is situated in the city of Ajmer. In the year 1956, a suit was filed by the respondents-landlords alleging the appellants to be their tenants in the suit premises. According to the respondents, the appellants had defaulted in payment of rent for a period running over three years since 29.11.1952. A demand-cum-quit notice was served on the appellants, which having not been complied with, rendered the appellants liable to be evicted under clause (a) of sub-section (1) of Section 13 of the Delhi and Ajmer Rent Control Act, 1952. The suit was decreed by the High Court holding the landlord-tenant relationship as proved and the appellants having incurred liability for eviction on the ground of default in payment of rent as alleged by the respondents.

When the decree was put to execution, the judgment debtors-appellants raised an objection as to the executability of the decree, submitting that during the pendency of the suit, by the effect of reorganization of States, Ajmer became part of Rajasthan w.e.f. 1st November, 1956 and the suit premises came to be governed by the provisions of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950-Section 13(l)(a) of the Rajasthan Act provides for the tenant incurring liability for eviction if the tenant has neither paid nor tendered the amount of rent due to the landlord for six months. However, the Rajasthan Act conferred an additional privilege on the tenant by providing that in a suit seeking eviction on the ground of default in payment of rent, the tenant may, during the pendency of the suit, deposit the amount of rent in arrears, with interest and costs, as directed by the Court, and in that event a decree for eviction cannot be passed. It was submitted that due to the failure of the Court in not having afforded the tenant such an opportunity in terms of the privilege conferred by the Rajasthan Act, the decree is rendered without jurisdiction and hence a nullity and is not available for execution. The objection was overruled by the executing Court and such dismissal of the objection to the executability of the decree was also upheld by the High Court. The aggrieved tenants have filed this appeal by special leave.

The submission made by Shri O.P. Sharma, learned senior counsel for the appellants, is that the provisions of the Rent Control Act are beneficial to the tenant and any protection conferred on the tenant must be given full effect to so as to protect the tenant from eviction unless permitted by law. Shri Sharma submitted that conferring the tenant with an opportunity for wiping out the effect of default by making deposit during the pendency of the proceedings is a privilege and protection specifically conferred on the tenant, and if any Court has passed a decree for eviction without complying with such provision of law, the decree would be a nullity and hence not available to be executed. On the other hand, the learned counsel for the respondents submitted that the decree is not a nullity and cannot be held to be inexecutable unless the decree can be said to be without jurisdiction, which it is not. The learned counsel for the respondents also pointed out that to avail the benefit of purging the effect of the default, it is for the tenant to make an application to the Court, seeking the opportunity of making a deposit and if the tenant did not do so he cannot be heard to contend that an opportunity for depositing the rent during the pendency of the proceedings was not allowed to him.

Having heard the learned counsel for the parties, we are satisfied that the appeal has no merit and is liable to be dismissed.

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 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 nullity based on want of jurisdiction; else the normal rule that an executing Court cannot go behind the decree must prevail.

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, 8th Edition, 2000, Wade and Forsyth, p. 308). Secondly, there is a distinction between mere administrative order and the decrees of Courts, especially a superior Court. The order of a superior Court such as the High Court, must always be obeyed no matter what flaws it may be thought to contain. Thus a party who disobeys a High Court injunction is punishable for contempt of Court even though it was granted in proceedings deemed to have been irrevocably abandoned owing to the expiry of a time limit. (Ibid, p. 312) 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.

In Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman & Ors., [1970] 1 SCC 670, it has been held :-

"When the decree is made by a Court which has no inherent jurisdiction to make it, objection as to its validity may be raised in an execution proceeding if the objection appears on the face of the record. But where the objection as to 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 decree even on the ground of absence of jurisdiction."

It is not the plea of the judgment debtors-appellants that the Court which passed the decree did not have the jurisdiction to do so. It is also not their case that a ground for eviction of the tenants on the ground of default in payment of arrears of rent was not available to the landlords- respondents within the meaning of the Delhi and Ajmer Act or the successor Rajasthan Act. The only submission made is that before passing the decree the Court should have afforded the tenant an opportunity of depositing the rent in arrears, which was not done. Firstly, we find merit in the submission of the learned counsel for the respondents that it was for the tenants to have invited the attention of the Court by making an application in that regard so as to avail an opportunity of wiping out the effect of their default which gave rise to cause of action to the respondents, by depositing the rent during the pendency of the suit. That having not been done, the tenants-appellants cannot be heard to urge any infirmity in the decree. Secondly, accepting it at its face value, in the eyes of law, the challenge seeks to expose a procedural irregularity which may, at best, result in the decree being termed as an 'illegal decree', but that in itself would not amount to branding the decree as 'without jurisdiction' or 'a nullity'. The plea which is sought to be urged in the execution proceedings was available to be raised by the tenants before the High Court in an appeal against the decree. Such a plea was not taken before the passing of the decree and cannot now be allowed to be urged during the execution

proceedings. It is unfortunate that a decree of eviction passed in a suit commenced in the year 1956 and culminating into a final decree in the year 1986 is still starving for its execution.

The appeal is dismissed with costs throughout. The executing Court shall expeditiously proceed ahead with execution proceedings.