Gobind Ram vs Gian Chand on 27 September, 2000

Equivalent citations: 2001 (3) LRI 194, 2001 SCFBRC 126, AIR 2000 SUPREME COURT 3106, 2000 AIR SCW 3468, 2000 (1) JT (SUPP) 101, 2000 (6) SCALE 522, 2000 (7) SCC 548, 2000 HRR 722, (2000) 4 CURCC 85, (2001) 2 LANDLR 236, (2001) 1 MAD LW 364, (2001) REVDEC 14, (2000) 4 SCJ 133, (2000) 6 SUPREME 438, (2000) 4 RECCIVR 674, (2000) 6 SCALE 522, (2000) 41 ALL LR 601, (2001) 1 ALL RENTCAS 342, (2001) 1 CIVLJ 112, (2000) 87 DLT 713

Bench: V.N.Khare, S.N. Phukan

CASE NO.:
Appeal (civil) 443 of 1994

PETITIONER:
GOBIND RAM

Vs.

RESPONDENT:
GIAN CHAND

DATE OF JUDGMENT: 27/09/2000

BENCH:
V.N.KHARE, S.N. PHUKAN

JUDGMENT:

L.....I.....T.....T.....T.....T.....T.....T.....J PHUKAN, J. JUDGMENT This appeat by special leave is directed against the judgment of Delhi High court dated 20th December, 1991 passed in RFA No. 50 of 1977.

We may briefly state the undisputed facts. IT. a appellant agreed to sale the disputed property situated at Lajpst Nagaar (IV), New Delhi for a consideration of Rs.'16,000/- to the resprdent and accordingly on 24^ January. 1973 an agreement to sale was executed and a sum of RS.IOOO/- WAS paid as earnest money to the appellant. Respondent filed the suit for specific performance of the contract as the appellant failed to execute the sale deed within time. On 6/10/1976 the suit was decreed and the respondent deposited balance consideration of Rs.15,000/- in the Trial Court. The appeal filed by the appellant in the High Court was also dismissed by the impugned judgment dated 20h December, 1991. However, to mitigate the hardship to the appellant and as the respondent

agreed to pay more sum, High Court directed the respondent to deposit a further sum of Rs.1,00,000/- which was to be released to the appellant on giving possession of the suit property. The said sum was also deposited in the registry of the High Court by the respondent and it is being kept in interest bearing fixed deposit. The appellant has filed the present appeal and that is how the parties are We have heard learned senior counsel for the parties. Only contention urged before us by the iearned senior counse'lfor the appellant is that Instead of decree for specific porformance, compensation may be awarded. At the time of issuance of notice in the special leave petition, teamed senior counsel for the appellant offered to pay Rs.1,16,000/- to the respondent to cancel the contract and get out of the decree. The respondent after his appearance before this court offered another sum of Rs.50,000/- so as to make the total consideration of Rs.1,50,000/-, In view of the above position leave was granted. When the matter came up before us another attempt was made for a settlement, which failed. At that time learned senior counsel for the respondent on instruction made an offer that respondent would pay further sum of Rs.l ,50,000/- as consideration. Learned senior counsel for the appellant has relied on this court's judgment in Damacherfa Anjaneyufu end Another vs. Damacherla Venkate Sesheish and Another MR 1987 SC- 1641. On the facts of that case the court recorded the finding that in case of grant of a decree of specific performance hardship would be claused to defendant and therefore compensation granted. Facts of present case are different. Next decision on which learned senior counsel for the appeilant relied is in Parakunnan Veetill Joseph's Son Msthew vs. Nedu'rnbera Kuruvifa's Son and Others AIR 1987 SC 2328. We may extract the relevant portion of the said judgment: "Section 20 of the Specific Relief Act, 1963 preserves judicial discretion to Courts as o decreeing specific performance. The Court should meticulously consider all facts and circumstances of the case. The Court is not bound to grant specific performance merely because it is lawful to do so. The motive behind the litigation should also enter into the judicial verdict. The Court should take care to see that it is not used as an instrument of oppression to have an unfair advantage to the plaintiff."

It is the settled position of Saw that grant of a decree Tor specific performance of contract is not automatic and is one of discretion of the Court and the Court has to consider whether it will be fair, just and equitable. Court is guided by principle of justice, equity and good consensus. As stated in P. V. Joseph's Son Mathew (supra) the court should meticulously consider all facts and circumstances of the case and motive behind the litigation should also be considered. High Court considering the facts of this case and observed as follows: "We are conscious of the fact that the defendant has been in possession of the said quarter for the last several decades and logical consequence of affirming the Judgment of the trial court would mean considerable hardship to him, at the same time the conduct of the defendant does not justify any further indulgence by the court. We have no doubt that the defendant has tried to wriggle out of the contract between the parties because of the tremendous escalation in the prices of real estate properties all over the country and in Delhi, inparticular in the last few years."

In view of the above dear finding of the High Court that the appellant tried to wriggle out of the contract between the parties because of escalation in prices of real estate properties, we hold that the respondent is entitled to get a decree as he has not taken any undue or unfair advantage over the appellant. it will be inequitab!e and unjust at this point of time to deny the decree to the respondent after two courts below have decided in favour of the respondent. While coming to the above

conclusion we have also taken note of the fact that the respondent deposited the balance of the consideration in the Trial Court and also the amount in the High court, as directed. On the other hand appellant as held by the High Court tried to wriggle out of the contract in view of the tremendous escalation of prices of real estate properties. However, to mitigate the hardship to the appellant we direct respondent to deposit a further sum of Rs.3,00.000/- within 4 months from today with the registry of this Court and the amount shall be kept in Short Term Deposit in a nationalised bank. While giving the gbove direction we have taken note of the offer made to us on behalf of the respondent. This amount is to be paid to the appellant on giving his possession of the suit property to the respomdent within 6 months from the date of the deposit of the - above amount. The appellant shall also be entitled to withdraw the amount already deposited in the Trial Court and the amount of Rs.1,00.,000/-which has been kept in Interest bearing fixed deposit in the registry of the High Court. With the above modification of the judgment of the High Court, appeal is dismissed. However, on the facts and circumstances. of the-case parties are directed to bear their own cost.

CONTENTION NO. 2:

> So far as this contantion is concerned, it has to b: kept in view that basic conditions of Section 44-A have clearly been satisfied by the decree-holder, Respondent No.l, who to execute foreign decree of Admiralty Court against Respondent No.2 who has suffered the decree in personam from the English Admiralty Court. Certified copy of the decree is already filed in the execution proceedings. It is, admittedly, a decree passed by the superior Court of Admiralty in England. That Court is situated in reciprocating territory as united Kingdom has been duly notified by the Central Government as a reciprocating territory. However, Mr. P. Chidambaram, learned senior counsel for the appellant, submitted that even if that is so, on a combined reading of Section 44-A and Section 39 sub-sections (1) and (3) of the C.P.C., it must be held that before such execution proceedings can be entertained by the Andhra Pradesh High Court in exercise of its admiralty jurisdiction as successor to the Chartered High Court of Madras, it must be shown that it was a competent Court which could have entertained such a suit of Respondent No.l against Respondent No.2 seeking decree in personam against it. He submitted that neither the foreign decree-holder Respondent No.l nor foreign judgment-debtor Respondent No.2 are Indian Nationals. None of them has any connection with India as residents or having any immovable property in India and no part of cause of action has also arisen in India in favour of Respondent No.l against Respondent No.2.
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> That the foreign decree of appellate Court is a personal decree against Respondent No.2 who is alleged to have committed breach of contract in London and hence the Admiralty Court's jurisdiction was invoked in England because the suit filed by Respondent No. I against Respondent No.2 was pertaining to the breach of salvage contract regarding Respondent No.2's ship H.V. Al Tabish which, on the date of the filing of the suit in English Admiralty Court, allegedly belonged to Respondent No.2. According to Mr. P. Chidambaram, learned senior counsel for the appellant, as no part of cause of action in this case had arisen in India and, especially within the local

territorial limits of the Andhra Pradesh High Court, even though it may be acting as an Admiralty Court such a suit could not have been filed by Respondent No. I personally against Respondent No,2 in the Andhra Pradesh High Court. If that is so, the Andhra Pradesh High Court is not competent to execute such a decree even by resorting to the legal fiction created by Section 44-A by treating such a foreign decree of English Admiralty Court as if it was a decree passed by the Andhra Pradesh Admiralty Court, in order to buttress this contention Mr. P.Chidambaram, learned senior counsel for the appellant, gave an extreme example. He placed a hypothetical illustration for our consideration. An English national files a suit against another English national for breach of contract regarding purchase of movable or immovable property in England. A competent English Court passes a decree at common law by way of damages for breach of contract by the foreign defendant and in favour of foreign plaintiff. If both the decree-holder as well as the judgment- debtor happen to take a trip to India as tourists and if the English decree-holder tourist finds his English judgment-debtor to be possessed of costly wrist-watch or other costly movable property in Agra when both of them are on a sight seeing tour of Taj Mahal at Agra can execution of such a foreign decree be enforced in the District: Court at: A.gra? Mr. P.Chidambaram, learned senior counsel for the appellant, posed this question to himself. He submitted that 5 superficial reading of Section 44-A may entitle such a foreign national English decree-holder armed with certified copy of the decree to file executior proceedings for recovering his money claim against the foreign judgment debtor in the District Court at Agra. He submitted that such executior petition would be travesty of justice and would reflect an absurd situatici which cannot be countenanced on a conjoint reading of Section 44-A an< Sections 38, 39 & 44 of the C.P.C.

Such an extreme contention canvassed by Mr. P.ChIdambararr learned senior counsel for the appellant, does not realty call for any serioc discussion in the present proceedings as we are not concerned with such hypothetical situation. But the situation is not so alarming as wrong assumed, with respect, by Mr.P.Chidambaram. When we turn to Section 31 we find that a decree may be executed either by the Court which passed it, by the Court to. which it is sent for execution. This Section by itself refers 1 decrees passed by Indian Courts against defendants who may be within the territorial jurisdiction of the competent Civil Court in the light of the correct place for suing in such Courts as laid down by Sections 15 to 20 of the C.P.C. If the nature of the suit against the defendant falls within any of these provisions then, admittedly, such a decree can be executed by the same Court which passed the decree being a competent Court but it can be sent by that competent Court to any other Court for execution if the defendant has properties within the territorial jurisdiction of any other competent Court in India and that is what Section 39(1) provides. The said section reads as under:

39. Transfer of decree.- (1) The Court which passed a decree may, on the application of the decree-holder, send It for execution to another Court of competent

jurisdiction," (a) If the person against whom the decree Is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or (b) if such person has not property within lhe local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or (c) if the decree directs the sale or delivery of immovable property situate outside the local limits of the jurisdiction of the Court which passed 'it, or

(d) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.

(2) The Court which passed a decree may of its own motion send «t for execution to any subordinate Court of competent jurisdiction.

(3) For the purposes of this section, a Court shall be deemed to be a Court of competent jurisdiction If, at the time of making the application for the transfer of decree to it, such court would have jurisdiction to try the suit in which such decree was passed."

Sub-section (3) of Section 39 provides that such a transferee court, admittedly situated in India, shall be deemed to be a court competent to execute such a transferred decree if, at the time of making the application for transfer of decrees, it is shown to have jurisdiction to try the suit in which such decree was passed. It must at once be noted that Section 38 refers to executing Courts in India which have themselves passed the decrees in suits which were within their jurisdiction and were admittedly, therefore, competent Courts, Such decrees passed by competent Courts in India can also be executed by getting the decrees transferred to other competent Courts in India provided the requirements of Section 39(1) read with subsection (3) are satisfied. Therefore, the transferee Court in India must be a competent Court, which at the time of making an application for transfer of decree by the decree-hoider, should be shown to have jurisdiction to pass such a decree even originally. It is easy to visualise that, this requirement of a transferee Court in India which gets jurisdiction qua such execution proceedings only on transfer from competent executing Court which has passed the decree in India is conspicuously absent, when we turn to Section 44-A. It nowhere lays down that the District Court in which decree of any superior Court of a foreign territory is submitted for execution by a foreign decree-holder must be a Court which could have been competent to pass such a decree if in the first instance such a suit was filed by a foreign national against another foreign national in India. The second distinguishing feature is that Section 44-A permits the foreign judgment debtor to challenge the foreign decree even before the executing Court: being the District Court in India on any of the grounds mentioned in Clauses (a) to (f) of Section 13. A transferee Court under Section 39 which is called upon to execute an Indian decree passed by a competent Indian Court against the judgment-debtor cannot permit the judgment-debtor to go beyond the decree sought to be executed by such transferee Court. But apart from these two distinguishing features and even proceeding on the lines as suggested by Mr. P.Chidambaram, learned senior counsel for the appellant, that in any case the District Court in India which is called upon to execute a foreign decree by treating it as if it was passed by itself should, in

the first instance, be shown to be competent to pass such a decree, the result would be the same on the facts of the present case.

It is no doubt true that the foreign decree, which is sought to be executed, is a money decree passed by the English Admiralty Court in favour of Respondent No. I against Respondent No.2. That decree is in personam for the simple reason that, at the time when the suit was filed in England, the res, namely, M.V. Al Tablish was not within the territorial waters of English Admiralty Court. Therefore, the plaintiff Respondent No. I had to sue only Respondent No.2 in personam for recovering damages for breach of salvage contract entered into between them. The said decree has become final between the parties. It is also axiomatic that if the res, namely, the vessel M,V. Al Tabish was available within the territorial waters of English Admiralty Court it would have also become co-defendant along with its owner Respondent No.2 and then the decree would have a decree in rem against the vessel but if Respondent No.2 had submitted to the jurisdiction of English Admiralty Court, the proceeding would have been converted into proceedings in personam and then a decree would have been passed also in personam against Defendant No.2 along with decree in rem against the vessel. If that had happened there would have been no difficulty for the English decree-holder in pursuing the vessel M.V, A! Tabish and to get his decree executed against the vessel wherever it went during the course of its voyage over the high seas and its ultimate anchorage in any port for the discharge or reloading of cargo in the course of maritime business. The contract of salvage of such vessel and any proceedings in connection with the execution of such contract or its breach raising claim for damages would remain in the realm of maritime claim legitimately within the jurisdiction of Admiralty Courts. In the absence of a decree in rem against the vessel whose salvage contract have given rise to the present maritime claim, the decree passed by competent Admiralty Court in England though remains a decree in personam could validly be executed by English Admiralty Court itself.

Once decree of foreign Superior Court is sought to be executed under Section 44-A of the C.P.C. as if it is the decree of the Indian Court executing the same, no further question would survive regarding competence of such executing court. Stilt let us consider in the alternative the question of competence of the Andhra Pradesh Admiralty Court for entertaining such a suit in its inception. Then the question arises whether the Andhra Pradesh High Court which is, admittedly, having admiralty jurisdiction as a successor to the Chartered High Court of Madras could have entertained such a suit in the first instance, we have, therefore, to visualise a situation by way of flashback as if a suit had to be filed in the first instance by Respondent No. I against Respondent No.2 in the admiralty jurisdiction of the Andhra Pradesh High Court in 1994 instead of in an English Court provided the res i.e. the ship was found at that time in the territorial waters of Andhra Pradesh. Then Respondent No. I could have filed a suit in personam against Defendant No.2 because, admittedly, it was alleged to have committed breach of salvage contract in connection with the sea-going vessel M.V. A/ Tabish which is a res and which by chance was found within the territorial waters of the port of Visakhapatnam in 1994. Such a 'res' would have admittedly remained within the original admiralty jurisdiction of the Andhra Pradesh High Court. Respondent No. I thus could have validly filed a suit praying for decree in rem against the vessel H.V. Al Tabish making it as Defendant No. I along with its owner Defendant No.2. What the English Court could do in connection with the suit validly filed on 11.10.1994 by Respondent No. I against Respondent No.2

would have been validly done by the Andhra Pradesh High Court if the vessel. Respondent No. I and Respondent No. 2 were all within the territorial admiralty Jurisdiction of the Andhra Pradesh High Court at that time. It is the case of Respondent No. I decree-holder that pending the said proceedings, illegally and by way of a fictitious transaction, the said vessel is alleged to have been transferred by Respondent No.2 infavour of M.V. Al Quamarsnd the ship's name is changed to H. V. Al Quamar form M.V. Al Tabish though in fact it still remains the property of Respondent No.2. That is a question which is still to be considered by the Andhra Pradesh High Court in the execution proceedings and for which we are not called upon at this stage to make any observations. But the fact remains that in such settings of the dispute between the parties such a suit could have been validly filed in the Andhra Pradesh High Churl's admiralty jurisdiction if the vessel was in its territorial waters on 11. ID. 1994, In such a contingency suit could then have been validly filed by plaintiff-Respondent No. I against defendant-Respondent No.2 and it could have validiy joined the vessel also as Defendant No.2. The Admiralty Court, being the Andhra Pradesh High Court, could have under these circumstances validly entertained the suit and would have been perfectly competent to pass a decree (n rem against the ship as we/I as the decree in personam against its owner Defendant No.2 if it had submitted to its jurisdiction for getting the ship bailed out. Such suit is perfectly maintainable irr the Andhra Pradesh High Court in exercise of its admiralty jurisdiction as already decided by a Bench of this Court in the case of M.V. Elisabeth and Others vs. Harwan investment and Trading Pvt. Ltd., Hanoekar House. Swatontapeth, Vasco-De-Gama, Goa etc. [1993 Supp (2) SCC 433]. That was a case in which the res in question was found within the territorial waters ofVisakhapatnam Port. Neither the plaintiff nor the defendant had any nexus with the territorial limits of the Andhra Pradesh. The cause of action has also had not arisen within Andhra Pradesh still because of the presence of res in territorial waters of the Andhra Pradesh, it was held by this Court that the Andhra Pradesh High Court as Admiralty Court had perfect jurisdiction to arrest the ship being sued as Defendant No. I before judgment. In the light of the aforesaid settled legal position, therefore, it must be held that once the vessel - M.V. Al Tabish came within the territorial waters of the Andhra Pradesh, the Andhra Pradesh High Court, as Admiralty Court, had complete jurisdiction to even initially entertain the suit against not only the ship but against its owner, that is alleged to have committed breach of salvage contract ^athat ship. If such a suit was maintainable in the inception before the Andhra Pradesh High Court in its admiralty jurisdiction, then at the executing stage when Section 44-A was invoked for executing a similar decree passed by competent superior Court in England in exercise of admiralty jurisdiction, such a decree could validly be executed by invoking the aid of corresponding Admiralty Court being the Andhra Pradesh High Court when the res was already within its jurisdiction. Consequently, even reading Section 39 (3) with Section 44-A, there is no from the L- ::nd'JSion that the time when execution petition was moved before the Andhra Pradesh High Court by even treating it as a transferee Court It can be said to be perfectly competent to entertain such a suit even in its inception against the ship as well as its alleged owner and to resolve the dispute between Respondent No.i and Respondent No.2. It has to be kept in view that if the ship in question which is arrested at Visakhapatnam had sailed out of the territorial waters of Andhra Pradesh then the Andhra Pradesh High Court would have lo.st its jurisdiction to entertain such a suit or the execution proceedings for executing the decree of foreign Court. But once it was within its territorial waters, the ship could havs been validiy subjected to such a suit not only against itself but against its owner. Whether the subsequent purchaser is a genuine purchaser of the ship and whether the sale transaction is hit by any other provision of law and

whether the ship still remains the property of Respondent No.2 could have been validiy examined in such a suit if it was originally filed before the Andhra Pradesh High Court in its admiralty jurisdiction. Under these circumstances, it cannot be said in the background of this fact situation that the Andhra Pradesh High Court, in exercise of its admiralty jurisdiction, was not competent to even originally entertain such a suit in which a foreign Court had passed the decree which is sought to be executed before it. Both the English Admiralty Court, which is, admittedly a Court of competent jurisdiction, as well as the Andhra Pradesh High Court, being a corresponding Court of competent admiralty jurisdiction, could not only entertain such a suit in the first instance but could equally be competent to execute such a decree of Admiralty Court.

The aforesaid analysis of Sections 44-A, 38 and 39 in the light of the fact situation which is well-established on record furnishes a perfect answer to the imaginary apprehension voiced by Mr. P.Chidambaram, learned senior counsel for .the appellant, and to the alleged absurd situation, which, according to him, may result if such execution petitions are entertained under Section 44-A for execution of foreign decrees passed between two absolute foreigners who have neither any immovable property nor place of residence in India. It is easy to visualise that a foreign English tourist who might have suffered a money decree against another foreign tourist in England may not be able to execute his decree in the District Court at Agra in India only because his judgment debtor who is a mere tourist is found to be possessed of some valuable property like jewellery or wrist-watch etc., as neither wrist-watch nor the jewellery nor even any valuable carpet possessed by a foreign judgment-debtor can give jurisdiction to the District Court, Agra to even in the first instance entertain such a suit by a foreign national 'against another foreign national but has no moorings in India and suit against whom does not fall within the fore-corners of Sections 15-20 of the C.P.C. subject, of course, to one rider i.e. such foreign national had not submitted to the jurisdiction of the District Court, Agra. If he had, then the District Court, Agra could have entertained such a suit in the first instance. Neither the wrist-watch nor any other movable valuable properties of the .foreign judgment-debtor can be equated with a res covered by a maritime claim which can be validly subjected to adjudication for s decree in rem by s competent Admiralty Court within whose territorial jurisdiction the res is found to be available for being subjected to arrest and detention either pending such Admiralty suit or in execution of the decree passed by a competent Admiralty Court, whether ^ local or foreign, as the case may be, subject to such foreign court being a Court in reciprocal territory as laid down by Section 44-A of the C.P.C. The District Court, Agra could not have passed a decree in rem against wrist-watch or carpet treating it to be a res. Consequently, the apprehension voiced by Mr.P.Chidambaram, learned senior counsel for the appellant, about such extraordinary, unimaginable or hcrrendous situation v^ould remain nearly imaginary, it is only in the Vight of the present facts we hold that Section 44-A was rightly invoked by Respondent No.i against Respondent No.2 and also against the vessel M.V. Af Tabish, which, according to Respondent No. I, is renamed as MM. Al Quamar and, which according to him, still belongs to its judgment-debtor Respondent No.2. Whether the said contention is right or wrong will have to be examined by the High Court under Order XXI Rule 58 of the C.P.C., as noted earlier. We say nothing on this factual aspect. All that we hold in the present proceedings is to the effect that the execufon petition on demurer was rightly held by the High Court as maintainable before it. The second contention of Mr. P.Chidambaram, learned senior counsel for the appellant, therefore, is also devoid of any merits and stands rejected. The appeals, therefore, fail subject to the liberty already given in

the judgment of brother Banerjee, I to the appellant to take away the ship subject to furnishing of suitable bank guarantee of a nationalised bank as indicated therein.