

LETTERS PATENT APPEAL

Before D. Falshaw and G. L. Chopra, JJ.

R. S. SETH GIRDHARI LAL,—Appellant

versus

RATAN LAL,—Respondent.

Letters Patent Appeal No. 224 of 1957

1960

Delhi and Ajmer Merwar Rent Control Act (XIX of 1947)—S. 14—Rules framed under—Rules 4 and 5—Decree for ejectment—Execution of—Order made in execution proceedings—Whether open to second appeal.

March 7th

Held, that no appeal lies against an order made in execution of a decree, where the decree itself is not appealable. Similarly, a second appeal is not competent from an order passed in proceedings in execution of a decree where no second appeal would have lain in the suit itself in which the decree was passed. Rule 4 of the Delhi Rent Control (Procedure) Rules, 1947, framed in exercise of the power conferred by section 14 of the Act, specifies the cases where a party to an original case shall have a right of appeal and the courts competent to hear the appeal. Rule 5 lays down that there shall be no right of second appeal. It is thus clear that under these rules no second appeal against an order made in 'an original case' under the Act is competent and a fortiori no second appeal is competent against an order passed in proceedings in execution of such a decree or order.

Application for Leave to Appeal Letters Patent under clause 10 of the Letters Patent from the order dated 23rd April, 1957 of Mr. Justice Gurnam Singh in the Circuit Bench at Delhi in Execution Second Appeal No. 21-D of 1956.

S. L. SETH, Advocate for the Appellant.

BH. DAYAL and YOGESHWAR DAYAL, Advocates for the Respondent.

ORDER

Chopra, J.

CHOPRA, J.—The only question involved in this appeal under clause 10 of the Letters Patent is whether a second appeal against an order made in execution proceedings of a decree for ejectment passed under the Delhi and Ajmer Merwar Rent Control Act XIX of 1947, is competent.

2. The facts relevant for the purposes of this appeal are these: The appellant-landlord had filed a suit for ejectment of his tenant, the respondent, on 24th August, 1945, on the ground of the tenant having sublet a part of the premises without obtaining his consent. A decree for ejectment, on the basis of a compromise, was passed in favour of the landlord on 29th November, 1945. According to the compromise the tenant was to vacate the premises after the expiry of six months. The tenant having failed to vacate the premises, the landlord-decree-holder took out execution of the decree. During the pendency of the execution proceedings, the Delhi and Ajmer Merwar Rent Control Act XIX of 1947 (hereinafter to be referred as the Act) came into force. The judgment-debtor raised certain objections to the execution, particularly on the ground that the decree had become inexecutable as provided in the Act. The objection was over ruled on 18th November, 1947, and an appeal against that order was also dismissed. The decree-holder succeeded in getting possession of a part of the premises. Another application for execution was then filed by the decree-holder. Some objections having again been taken by the judgment-debtor, the execution application was dismissed. A third and the present application for execution was preferred by the decree-holder on 3rd December, 1952, praying for delivery of possession of the remaining portion of the premises.

The judgment-debtor raised the same objection over again, viz., that the decree contravened the provisions of the Act. and was, therefore, inexecutable. The executing Court repelled the objection in view of the order, dated 18th November, 1947, already made in the first execution application. However, in appeal, the objection was accepted and the order of the executing Court was set aside. It was against this order that a second appeal was filed in this Court and a preliminary objection was taken that the appeal was not competent. The learned Single Judge, Gurnam Singh, J. accepted the preliminary objection and dismissed the appeal as incompetent. It was further observed that even if the appeal were treated as revision, there appeared to be no ground for interference, but with this part of the order we are not at present concerned.

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3. It is common ground between the parties that the decree for ejection was made when the Delhi Rent Control Ordinance, No. 25 of 1944, was in force and that the relevant provisions of the Ordinance were similar to those of the Act, which came into force on 24th March, 1947. It is also agreed that the rules framed under the Ordinance were identical with those framed under the Act. Section 14 of the Act provides for rules to be framed by High Court *inter alia* with a view to determine the classes of Courts which shall have power to hear and decide original cases, appeals and applications for revision and to deal with execution proceedings under the Act, and the procedure to be followed by them. The power to frame rules includes the power to determine in what circumstances the parties shall have a right to appeal or apply for review or revision in cases under the Act. Rule 4 of the Delhi Rent Control (Procedure) Rules, 1947, framed in exercise of the

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power conferred by section 14 of the Act, specifies the cases where a party to an original case shall have a right of appeal and the Courts competent to hear the appeal. Rule 5 lays down that there shall be no right of second appeal. It is thus clear that under the rules no second appeal against an order made in 'an original case' under the Act is competent.

4. The contention raised on behalf of the appellant is that an order made by the executing Court under section 47, Code of Civil Procedure, determining a question that arises between the parties to the suit and relates to the execution, discharge or satisfaction of the decree amounts to a decree and as such the order is appealable by virtue of section 96 of the Code and a second appeal against the order would also be competent if the case satisfies the conditions laid down by section 100. Rules 4 and 5 framed under the Act, it is submitted, relate to orders made in original cases and are not applicable to an execution proceedings.

5. Now, the principle of law is well established that no appeal shall lie against an order made in execution of a decree, where the decree itself is not appealable. Similarly, a second appeal will not be competent from an order passed in proceedings in execution of a decree where no second appeal would have lain in the suit itself in which the decree was passed. Section 9 of the Specific Relief Act lays down that no appeal shall lie from an order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed. The question has several times arisen as to whether an order made in execution of a decree passed under section 9 of the Specific Relief Act is appealable or is open to

review. In *Kanai Lal Ghose v. Jatindra Nath Chandra* (1), it was held that an application in execution proceedings is included in the term 'suit' in section 9 of the Specific Relief Act and, therefore, an appeal to the District Judge from an order of the executing Court was incompetent. The same view was taken by Shadi Lal J. (as he then was), in *Jahangir Singh v. Hira and others* (2).

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6. Another instance of cases falling under section 102, Code of Civil Procedure, may also be cited with advantage. The section provides that no second appeal shall lie 'in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed five hundred rupees'. It has been repeatedly held that in such a case second appeal will not lie from an order passed in proceedings in execution of the decree, because no second appeal would have been competent in the suit itself in which the decree was passed [*vide Bhagela Shah v. Sita Ram and others* (3), *Rustomji Ardeshir Irani v. Vinayak Gangadhar Bhat* (4), *Din Dayal v. Patrakhan* (5) *Narayan Parmanand v. Nagindas Bhaidas* (6), and *Mavula Ammal and another v. Mavula Maracoir* (7)].

7. Proceedings in execution are no separate, independent proceedings, but they are proceedings in or arising out of a suit. Where the Legislature with the object of preventing protracted litigation provides that no second appeal lies in a suit or 'an original case', there seems to be no reason why, nevertheless, the Legislature should be

(1) XLV Calcutta 510
(2) XXXIX I.C. 375
(3) A.I.R. 1928 Lah. 444
(4) XII B.L.R. 723
(5) XVIII Allh. 481
(6) I.L.R. Bomb. XXX 113
(7) I.L.R. Mad. 212

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taken to have intended to allow a second appeal against an order made in a proceeding for the enforcement of the decree or order passed in that suit or 'original case'. In my view, the words 'an original case' in rule 4 of the Rules under the Act should be deemed to include a proceeding in execution of the decree or order made in the 'original case'. There would thus be no right of second appeal in such a case, as provided by Rule 5. Sections 96 and 100 of the Code of Civil Procedure, which provide for appeal and second appeal from an original decree, start by saying, 'Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force'. It follows that the right of appeal or second appeal can be taken away by a special or local enactment and where that is done section 96 or section 100 will have no application.

8. Reliance on behalf of the appellant is placed on a Division Bench decision of this Court in *Messrs Hans Raj Salig Ram v. L. Niranjan Lal* (1). That was, however, a case under the Punjab Urban Rent Restriction Act (VI of 1947), the relevant provisions of which are widely different. The said Act, constitutes special Tribunals for determination of questions arising under that Act, and deal with them. Under section 13—the section dealing with eviction of tenants—it is the Controller who has to decide the matter. Section 15 provides for an appeal to such appellate authority as the Provincial Government may specify. By clause (4) of section 15 the decision of the appellate authority is made final. Section 17 relates to execution of orders passed under that Act and says:—

“Every order made under section 10, or section 13, and every order passed on

(1) 1952 P.L.R. 31

appeal under section 15 shall be executed by a Civil Court having jurisdiction in the area as if it were a decree of that Court."

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The scheme of that Act thus is that further proceedings by way of execution of the order shall go to the ordinary Civil Courts. That being so, all the incidents of the ordinary procedure of Civil Courts shall attach to the disposal of matters arising out of the execution proceedings and those incidents of ordinary procedure would, if necessary, include rights of appeal. It was in view of these peculiar provisions of the statute that the learned Judges held that an order deciding a question between the parties to the original proceedings or their representatives and relating to the execution, discharge or satisfaction of the order made under section 10, section 13 or section 15 of the said Act is appealable under section 96 of the Code of Civil Procedure, and from an order passed in appeal under section 96 of the Code a second appeal lies under section 100 of the Code on grounds mentioned in clauses (a), (b) or (c) of the said section. The decision is clearly distinguishable and can have no application to a case covered by the provisions of the Act under consideration. In *Padam Parshad v. Dip Chand and others* (1) a case under the East Punjab Urban Rent Restriction Act, 1949, (the relevant provisions of which are similar to those of Act VI of 1947), my learned brother Falshaw, J., followed the above decision and expressed the view that the effect of section 17 of the East Punjab Urban Rent Restriction Act is that execution of orders passed under sections 10, 13 and 15 of that Act are to be treated as ordinary execution proceedings as if they were ordinary decrees of Civil Courts, and that both the ordinary procedure and the ordinary

(1) 1957 P.L.R. 24

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rules as to appeals would apply. For the reasons already stated the decision has no bearing on the facts of this case.

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9. I would accordingly dismiss the appeal and leave the parties to bear their own costs.

Falshaw, J.

FALSHAW, J.—I agree.

B. R. T.

APPELLATE CIVIL.

Before G. D. Khosla, C. J., and P. C. Pandit, J.

PIARA LAL KHANNA,—Appellant.

versus

HERCHAND SINGH JAIJI,—Respondent.

Regular First Appeal No. 42 (P) of 1953

Negotiable Instruments Act (XXVI of 1881)—S. 79—Suit on promote—Award of interest after the date of the suit—Whether within the discretion of the Court—Debtor having paid practically twice the amount originally advanced—Refusal to award future interest after the date of the suit—Discretion exercised—Whether proper.

Held, that in a suit on the basis of a promissory note the award of interest after the date of the suit is within the discretion of the Court and in a case where the debtor has already paid practically twice the amount originally advanced, it cannot be held that the trial court, in refusing to award future interest after the date of the suit, exercised its discretion wrongly.

First Appeal from the decree of the Court of Shri Shamsheer Singh Attri, Sub-Judge, 1st Class, Patiala, dated the 1st day of August, 1953, granting the plaintiff a decree for the recovery of Rs. 6,532 from the defendant payable in five instalments and in case of default of any one instalment the whole of the amount would become due and the costs would follow the event which the plaintiff would be entitled to recover with the last instalment and further directing that the payment would be made through Bank of Patiala.

PURAN CHAND, Advocate for the Appellant.

R. N. SANGHI, Advocate for the Respondent.

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March 10th