



**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE**

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

SECOND APPEAL No. 1576 of 2021

CHIRANJEEV HOSPITAL SERVICES PRIVATE LIMITED

Versus

GHANSHYAM DAS PURUSHWANI

Appearance:

Shri Santosh Agrawal – Advocate for appellant.

Shri Gaurav Mishra- Advocate for respondent No.1.

Reserved on : 13.03.2025

Pronounced on : 01.04.2025

J U D G M E N T

This Second Appeal, under Section 100 of CPC, has been filed against judgment and decree dated 21/9/2021 passed by Third District Judge, Gwalior (M.P.), in RCA No.217 of 2019 arising out of judgment and decree dated 15/11/2019 passed by 14th Civil Judge Class II, Gwalior, in MJC No.9 of 2016.

2. Facts necessary for disposal of present appeal, in short, are that respondent No.1 filed Civil Suit No.102A/2014 for eviction against respondent No. 2 on the ground of subletting and *bona fide* need for residential purposes. On 31/7/2015, judgment and decree were passed in favor of respondent No.1. It appears that



appellant filed an application under Order 21 Rule 97 CPC, alleging that the suit for eviction was collusive and under the garb of a collusive suit, appellant is being dispossessed. Appellant claimed he is not a sub-tenant but is in possession of the property in his independent right. Respondent No. 1 had executed a rent agreement through his son, Deepak Puruswani, and handed over possession of the property in dispute for running a hospital. Accordingly, appellant has established a hospital in the name of Chiranjeev Hospital Services Private Limited, and respondent No.1 was receiving the rent through his son, Deepak, by account payee cheques. Respondent No. 2 was never in actual possession of the property in dispute and was never inducted by respondent No.1 as a sub-tenant. Since respondent No. 2 has a close relationship with respondent No. 1, therefore collusive suit was filed, and a collusive decree was obtained on 31/7/2015. Under the garb of subletting, respondent No. 1 is trying to dispossess appellant. The aforementioned application was dismissed by the trial court by order dated 15/11/2019 passed in MJC No.09 of 2016.

3. Being aggrieved by the said order, the appellant preferred RCA No. 217/2019, which too was dismissed by the Third District Judge, Gwalior, by judgment and decree dated 21/9/2021.

4. By order dated 25.02.2022, the second appeal has been admitted on the following substantial questions of law:

(i) Whether learned trial Court is justified in directing the appellant to lead evidence without framing any point for determination/issue in the matter?

(ii) Whether learned trial Court has caused serious prejudice to the appellant by closing the right to lead evidence and proceed further?

(iii) Whether learned appellate Court has committed serious error of law in not allowing application under Order 41 Rule 27 C.P.C.? and

(iv) Whether learned trial Court is justified in not deciding the



application under Section 151 C.P.C. by which appellant keeping himself present in the Court and offered him to cross-examination and committed serious error of law?

5. Heard learned counsel for the parties.
6. From the order-sheets of the trial court, it appears that appellant preferred an application under Order 21 Rule 97 CPC on 4/1/2016. It was pleaded by appellant that in order to decide the application filed under Order 21 Rule 97 CPC, issues are to be framed. However, by order dated 19/9/2016, the trial court held that in case if it is required, only then the issues will be framed. Accordingly, appellant was directed to keep his witnesses present, and the case was fixed for 6/10/2016. On 6/10/2016, the witnesses of appellant were not present. However, appellant filed an application under Order 11 Rule 14 CPC read with Section 65 of the Evidence Act. Thereafter, the case was fixed for passing of order on the said application as well as for recording of evidence of appellant on 7/10/2016. On 7/10/2016, the Presiding Officer was on leave. Thereafter, by order dated 20/10/2016, the case was fixed for 8/11/2016 for recording of evidence. On 8/11/2016, the application filed by appellant under Order 11 Rule 14 CPC read with Section 65 of the Evidence Act was rejected, and last opportunity was given to appellant to lead his evidence & fixed the case for 9/11/2016. On 9/11/2016, time was granted to appellant to lead evidence, and the case was fixed for 17/11/2016. On 17/11/2016, the witnesses of appellant were not present. However, appellant filed an application under Order 16 Rule 7 read with Section 151 CPC, and the case was fixed for 5/12/2016 for filing a reply to the said application. On 5/12/2016, counsel for the respondent sought time to file reply, and the case was fixed for 21/12/2016. On 21/12/2016, again, the case was adjourned for filing reply. Ultimately, on 22/12/2016, the application filed by appellant under Order 16 Rule 7 read with Section 151 CPC was rejected, and it



was directed that appellant must produce his witnesses on the next date of hearing, i.e., 12/1/2017; otherwise, his right to lead evidence would be closed. On 12/1/2017, once again, the witnesses of appellant were not present. Accordingly, the case was listed for 18/1/2017. On 18/1/2017, the affidavit of appellant under Order 18 Rule 4 CPC was filed, and the case was fixed for cross-examination of appellant on 1/2/2017. On 1/2/2017, appellant was present; however, counsel for appellant sought time, which was objected to by counsel for respondent. An application under Order 7 Rule 14 read with Section 151 CPC was also filed by appellant. The application was allowed on payment of cost of ₹500/-, and the case was fixed for 15/2/2017. On 15/2/2017, the case was taken up at 12:00 PM, but the witnesses of appellant were not present. The case was passed over. In the pass-over round, appellant filed an application under Order 13 Rule 10 and Order 7 Rule 14 CPC. However, the trial court did not decide the application and closed appellant's right to lead evidence on the ground that he has failed to lead evidence despite being granted multiple opportunities.

7. Thereafter, on account of pendency of some writ petition before this Court, the case was adjourned. By order dated 19/7/2018, the application filed by appellant under Order 7 Rule 14 CPC was allowed, and the documents filed by appellant were taken on record. However, the application filed under Order 13 Rule 10 CPC was rejected on the ground that the certified copy of the record of the court below was already available.

8. Thus, it is clear that even after closing the right of appellant to lead evidence and even after fixing the case for recording of defendant evidence, the trial court accepted the application filed by the appellant under Order 7 Rule 14 CPC. It is not out of place to mention here that this application was filed on 15/2/2017, when the right of appellant to lead evidence was closed. Thereafter, one application under Section 151 CPC was filed by respondent No.1, and the



case was adjourned for arguments on the said application. On 23/8/2018, the application filed by respondent No.1 under Section 151 CPC was dismissed, holding that the question of *mesne* profit would be decided at the time of final disposal.

9. Another application filed by appellant under Section 151 of CPC was pending, which was also considered on 23/8/2018. By this application, appellant sought permission to cross-examine Pradeep Agarwal. However, the said application was rejected on the ground that by the order dated 15/02/2017, the right of appellant to lead evidence had already been closed.

10. Thereafter, on 24/10/2018, appellant filed an application under Section 151 of CPC, and the case was fixed for 25/10/2018 for arguments on the said application. By the aforesaid application, it was sought that a writ petition has been filed by appellant which is pending, and notices have also been issued. However, in the absence of any stay from this Court, the application for deferment to lead evidence was rejected.

11. Another application under Order 11 Rule 14 CPC read with Section 65 of the Evidence Act was taken up. In that application, appellant showed that the original copy of the rent agreement executed between respondent No.1 and respondent No.2 is in possession of respondent No.1. Therefore, he should be directed to produce the same. Accordingly, it was directed that the record of Civil Suit No.102A/2014 be requisitioned from the record room.

12. Thereafter, on 14/11/2018, after perusing the record of the civil suit, it was observed that the original copy of the rent agreement executed by respondent No. 1 with respondent No. 2 was not available. Accordingly, respondent No. 1 was directed to produce the original rent agreement, and the case was fixed for 12/12/2018 for cross-examination of respondent No. 1.

13. On 12/12/2018, an affidavit under Order 18 Rule 4 CPC of Pradeep



Agarwal was filed along with a photocopy of the rent agreement. The case was then adjourned, and ultimately on 21/2/2019, respondent No. 1 expressed that he does not wish to lead any evidence and prayed for final arguments. On 14/3/2019, an application was filed seeking permission to exhibit the document because respondent No. 1 had deliberately closed his right to lead evidence. However, the said application was partially allowed, and the order dated 16/5/2016 was taken on record. Finally, on 15/11/2019, the application filed under Order 21 Rule 97 CPC was dismissed.

14. Thus, it is clear that although right of appellant to lead evidence was closed by order dated 15/02/2017, but the application filed by appellant under Order 7 Rule 14 on the very same day was not taken into consideration prior to closing of the right to lead evidence. This application was finally decided by order dated 19/7/2018, and the documents filed by appellant were taken on record.

15. A very peculiar situation has arisen in the present appeal. Although application filed under Order 7 Rule 14 CPC was pending, but still, without deciding the application, the trial court closed the right of appellant to lead evidence and at a later stage, the application filed by appellant under Order 7 Rule 14 CPC was allowed, and the documents filed by appellant were taken on record.

16. Under these circumstances, this Court is of considered opinion that the trial Court should have granted the opportunity of hearing to appellant to prove his case or at least to get the documents exhibited.

17. There is another aspect of the matter. Appellant had prayed for framing of issues. However, the said application was rejected on the ground that at the time of final disposal, the requirement of framing issues shall be considered. The Supreme Court in the case of **Silverline Forum Pvt. Ltd. Vs. Rajiv Trust and another** reported in **AIR 1998 SC 1754** has held as under:

10. It is true that Rule 99 of Order 21 is not available to any person until he is dispossessed of immovable property by the decree-holder.



Rule 101 stipulates that all questions “arising between the parties to a proceeding on an application under Rule 97 or Rule 99” shall be determined by the executing court, if such questions are “relevant to the adjudication of the application”. A third party to the decree who offers resistance would thus fall within the ambit of Rule 101 if an adjudication is warranted as a consequence of the resistance or obstruction made by him to the execution of the decree. No doubt if the resistance was made by a transferee pendente lite of the judgment-debtor, the scope of the adjudication would be shrunk to the limited question whether he is such a transferee and on a finding in the affirmative regarding that point the execution court has to hold that he has no right to resist in view of the clear language contained in Rule 102. Exclusion of such a transferee from raising further contentions is based on the salutary principle adumbrated in Section 52 of the Transfer of Property Act.

When a decree-holder complains of resistance to the execution of a decree it is incumbent on the execution court to adjudicate upon it. But while making adjudication, the court is obliged to determine only such question as may be arising between the parties to a proceeding on such complaint and that such questions must be relevant to the adjudication of the complaint.

The words “all questions arising between the parties to a proceeding on an application under Rule 97” would envelop only such questions as would legally arise for determination between those parties. In other words, the court is not obliged to determine a question merely because the resister raised it. The questions which the executing court is obliged to determine under Rule 101, must possess two adjuncts. First is that such questions should have legally arisen between the parties, and the second is, such questions must be relevant for consideration and determination between the parties, e.g., if the obstructor admits that he is a transferee pendente lite it is not necessary to determine a question raised by him that he was unaware of the litigation when he purchased the property. Similarly, a third party, who questions the validity of a transfer made by a decree-holder to an assignee, cannot claim that the question regarding its validity should be decided during execution proceedings. Hence, it is necessary that the questions raised by the resister or the obstructor must legally arise between him and the decree-holder. In the adjudication process envisaged in Order 21 Rule 97(2) of the Code,



the execution court can decide whether the question raised by a resister or obstructor legally arises between the parties. An answer to the said question also would be the result of the adjudication contemplated in the sub-section.

11. In the above context we may refer to Order 21, Rule 35(1) which reads thus:

“Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.”

12-13 It is clear that the executing Court can decide whether the resister or obstructor is a person bound by the decree and he refuses to vacate the property. That question also squarely falls within the adjudicatory process contemplated in Order 21 Rule 97(2) of the Code. The adjudication mentioned therein need not necessarily involve a detailed enquiry or collection of evidence. The court can make the adjudication on admitted facts or even on the averments made by the resister. Of course the court can direct the parties to adduce evidence for such determination if the court deems it necessary.

14. In *Bhanwar Lal v. Satyanarain*, (1995) 1 SCC 6: (1994 AIR SCW 4549), a three-Judge Bench has stated as under (at p.4551 of AIR SCW):

“A reading of Order 21 Rule 97 CPC clearly envisages that ‘any person’ even including the judgment-debtor irrespective whether he claims derivative title from the judgment-debtor or sets up his own right, title or interest dehors the judgment-debtor and he resists execution of a decree, then the court in addition to the power under Rule 35(3) has been empowered to conduct an enquiry whether the obstruction by that person in obtaining possession of immovable property was legal or not. The decree-holder gets a right under Rule 97 to make an application against third parties to have his obstruction removed and an enquiry thereon could be done.”

15. In *Brahmdeo Chaudhary v. Rishikesh Prasad Jaiswal*, (1997) 3 SCC 694: (1997 AIR SCW 685) this Court, following the aforesaid decision,



made the underquoted observation (at p.688 of AIR SCW):

“It is pertinent to note that the resistance and/or obstruction to possession of immovable property as contemplated by Order 21 Rule 97 CPC could have been offered by any person. The words ‘any person’ as contemplated by Order 21 Rule 97, sub-rule (1) are comprehensive enough to include apart from judgment-debtor or anyone claiming through him even persons claiming independently and who would, therefore, be total strangers to the decree. ... Consequently it must be held that Respondent 1's application dated 6-5-1991 though seeking only reissuance of warrant for delivery of possession with aid of armed force in substance sought to bypass the previous resistance and obstruction offered by the appellant on the spot. Thus it was squarely covered by the sweep of Order 21 Rule 97, sub-rule (1) CPC. Once that happened the procedure laid down by sub-rule (2) thereof had to be followed by the executing court. The Court had to proceed to adjudicate upon the application in accordance with the subsequent provisions contained in the said order.”

18. In the present case, appellant is claiming his independent right, and it is his case that the eviction decree obtained by respondent No. 1 against respondent No. 2 is collusive one. In fact, appellant was inducted as a tenant by respondent No. 1, and he was receiving rent through his son."

19. Under these circumstances, this Court is of considered opinion that the trial Court/executing Court should have framed the issues.

20. Considering the totality of facts and circumstances of the case, substantial question of law No. 1 is answered in negative and substantial question of law No. 2 is answered in the affirmative. In the light of foregoing observations, answers to substantial questions of law No. 3 and 4 are not necessary because the entire case stands reopened.

21. Accordingly, judgment and decree dated 21/9/2021 passed by Third District Judge, Gwalior, in RCA No. 217 of 2019, as well as the order dated 15/11/2019 passed by the 14th Civil Judge Class II, Gwalior, in MJC No.9/16, are hereby set aside. The matter is remanded back to the Executing Court to frame issues and



thereafter proceed further. However, appellant is directed not to seek unnecessary adjournments for leading evidence. Only three opportunities shall be granted to appellant to lead evidence. If appellant fails to examine himself or his witnesses, then trial court shall positively close his right to lead evidence.

22. With aforesaid observations, the appeal is allowed. The parties are directed to appear before the Executing Court on 29/4/2025 and on all other dates which shall be fixed by the trial Court/Executing Court.

(G.S. Ahluwalia)
Judge

(and)