

2011 AIR SCW 24
 SUPREME COURT
 (From : Punjab and Haryana)*
 MARKANDEYA KATJU ,
 J. and T. S. THAKUR , J.

Civil Appeal No. 10249 of 2003, D/- 8 - 9 - 2010

Maya Devi (deceased by L.Rs.) v. Smt. Raj Kumari Batra (deceased by L.Rs.) and Ors

(A) Civil P.C. (5 of 1908), O.21 R.92, O.21 R.66(2), O.21 R.84, S.11 - Auction sale - Confirmation of sale in favour of decree-holder and issue of a sale certificate in

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her favour - All contentions assailing validity of - Rejected by Executing Court and High Court - Order of High Court attaining finality by dismissal of SLP against it cannot be re-agitated again by filing fresh objections.

(Para8)

(B) Civil P.C. (5 of 1908), O.41 R.23 - Remand - Powers of Court - Litigation prolonged for three decades - Appellate Court despite absence of reasons in lower Court's order decided to resolve matter on merits rather than remitting same back for fresh disposal - No illegality.

Recording of reasons in cases where the order is subject to further appeal is very important. An appellate Court or the authority ought to have the advantage of examining the reasons that prevailed with the Court or the authority making the order. Conversely, absence of reasons in an appealable order deprives the appellate Court or the authority of that advantage and casts an onerous responsibility upon it to examine and determine the question on its own. An appellate Court or authority may in a given case decline to undertake any such exercise and remit the matter back to the lower Court or authority for

a fresh and reasoned order. That, however, is not an inflexible rule, for an appellate Court may notwithstanding the absence of reasons in support of the order under appeal before it examines the matter on merits and finally decides the same at the appellate stage. Whether or not the appellate Court should remit the matter is discretionary with the appellate Court and would largely depend upon the nature of the dispute, the nature and the extent of evidence that may have to be appreciated, the complexity of the issues that arise for determination and whether remand is going to result in avoidable prolongation of the litigation between the parties. Remands are usually avoided if the appellate Court is of the view that it will prolong the litigation.

(Para16)

Where the appellate Court was conscious of the fact that the litigation had been prolonged for many years and, it therefore, decided to resolve the matter on merits rather than remitting the same back for a fresh disposal by the Single Judge, it was held that it did not commit any mistake to warrant interference under Art. 136 of the Constitution.

(Para17)

Cases Referred	Chronological Paras
AIR 2010 SC 1285 (Ref.)	13
AIR 2009 SC (Supp) 1410 (Ref.)	13
AIR 2008 SC 2061 (Disting.)	7
AIR 2008 SC (Supp) 327 (Ref.)	13
AIR 2007 SC 1363 (Ref.)	13
AIR 1998 SC 688 (Ref.)	13
AIR 1994 SC 853 (Disting.)	7
1993 AIR SCW 3458 (Disting.)	6
AIR 1990 SC 119	7
AIR 1988 SC 1531	7
AIR 1986 SC 1497 (Ref.)	13
AIR 1954 SC 349 (Ref.)	8

R.K. Kapoor, Ramraghvendra, (for Anis Ahmed Khan), for Appellants; Arvind Verma, Sr. Advocate, Arvind Minocha, Ms. Veena Minocha, Randhir Singh, for Respondents.

L. P. A. No. 167 of 1989, D/-5-10-2001 (PandH) (reported in 2002 (2) Pun LR 38)

Judgement

1. T. S. THAKUR, J. :This appeal by special leave arises out of an order passed by a Division Bench of the High Court of Punjab and Haryana whereby Letters Patent Appeal No. 167 of 1989 filed by the appellants has been dismissed with costs.

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The facts giving rise to the present appeal have been set out at length in the order impugned in this appeal hence call for no repetition except to the extent the same is absolutely necessary. What is striking about the case is that a decree passed in favour of the respondent as far back as on 25th October, 1976 remains to be executed even after the lapse of 34 years during which period the decree holder as also the judgment-debtor have both passed away leaving behind the legacy of litigation to the next generation. The chequered history of a bitter fight which has brought the parties to this Court for the second time amply demonstrates that the real troubles of a plaintiff start only after he obtains a decree, thanks to the long winding legal procedure and the ingenuity of the lawyers who often exploit the same to the benefit of one party at the cost of the other.

2. A suit filed by Late Raj Kumari the plaintiff for recovery of a sum of Rs. 60,000/- was decreed in her favour with costs by the Trial Court on 25th October, 1976 against Hans Raj, defendant now deceased. In execution of the said decree SCF No. 9, Sector 27-D, Chandigarh was attached and finally sold in a public auction on 17th April, 1978, for a sum of Rs. 82,000/- in favour

of the decree-holder who was permitted by the Executing Court to participate in the auction. The judgment-debtor filed his objections challenging the legality of the auction, but while the same were pending consideration, the parties put in a written compromise on 16th June, 1979 which, inter alia, provided that the decree-holder would deposit a sum of Rs. 35,000/- for payment to the judgment-debtor, whereupon the latter shall handover to the decree-holder the vacant possession of the property aforementioned that stood attached. The Executing Court recorded the statement of the parties in support of the compromise and adjourned the matter for passing final orders. But before any such order could be made the judgment-debtor filed an application with a prayer for setting aside the compromise on the ground that the same was void ab initio and had been brought about by fraud. Another application filed by him prayed for setting aside of the sale for non-compliance with the provisions of Order XXI, Rules 72 and 84 of the C.P.C. The decree-holder also moved an application for passing final orders in terms of the compromise stating that he had deposited the bank drafts for a total sum of Rs. 35,000/- as the judgment-debtor had refused to accept the said amount.

3. The Executing Court finally made an order on 30th August, 1979 whereby it confirmed the sale in favour of the decree-holder in accordance with the compromise between the parties. Aggrieved, the judgment-debtor filed FAO No. 502 of 1979 before the High Court of Punjab and Haryana. The appeal failed and the contention urged before the High Court that the compromise entered into between the parties was vitiated by fraud was repelled. The High Court further held that the sale in favour of the decree-holder was not in violation of the provisions of Order XXI, Rules 84 and 85 of CPC. A Letters Patent Appeal filed against the order passed by the learned Single Judge also failed and was dismissed on 18th November, 1981. A Special

Leave Petition against the said two orders was dismissed by this Court in limine on 5th January, 1982 thereby bringing finality to the question of legality of the sale of the property in favour of the decree holder on the basis of the compromise/adjustment arrived at between the parties.

4. The judgment-debtor then filed fresh objections before the Executing Court, inter alia, contending that the property bearing SCF No. 9, Sector 27-D, Chandigarh, was exempt from attachment and sale, the same being a residential premises and the decree in question being a simple money decree. The decree-holder also moved an application for restoration of the execution proceedings which had been adjourned

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sine die and the execution file consigned to record, on account of stay issued by the High Court in the earlier proceedings. The Executing Court formulated the points that arose for determination and answered the same against the judgment-debtor in terms of its order dated 25th September, 1984. It held that the confirmation of sale and issue of the sale certificate in favour of the decree-holder was legal and valid and that the decree-holder was entitled to possession of the property sold in her favour. Resultantly, the Executing Court issued warrants for delivery of possession of the property in question in favour of the decree-holder.

5. The delivery of possession was for the third time resisted by the judgment-debtor on the ground that there was no decree for possession. The Executing Court dealt with these objections in its order dated 5th October, 1987 and noted that the issues raised by the judgment-debtor had already been decided against him by the earlier orders of the Executing Court dated 30th August, 1979 and 25th September, 1984 which orders had attained finality. It also held

that application dated 22nd January, 1985 under Order XXI, Rule 97, CPC having been filed by the decree-holder within the stipulated period of 30 days from the date of resistance to the delivery of possession was maintainable. The above order was assailed by the judgment-debtor in Execution First Appeal which was dismissed by a learned Single Judge of the High Court on 26th September, 1988. A Letters Patent Appeal preferred against the said order also failed and was dismissed on 5th October, 2001. The present appeal assails the correctness of the said order as noticed earlier.

6. Appearing for the appellant Mr. R. K. Kapoor strenuously argued that the Executing Court had committed a serious irregularity in the matter of directing attachment of property of the judgment-debtor and issuing a sale proclamation. He contended that since the proclamation of sale was itself fraudulent and in complete violation of the provisions of Rule 66(2), Order XXI all the subsequent proceedings of auction sale, its confirmation and issuance of certificate etc. were a nullity in the light of the judgment of this Court in *Desh Bandhu Gupta v. N.L. Anand*, 1994 (1) SCC 131 : (1993 AIR SCW 3458). He further contended that the Executing Court had permitted the decree-holder to participate in the auction of the property in question in violation of Order XXI, Rule 72-A. He urged that if the decree in favour of the decree-holder was a mortgage decree, it was essential for the Court to fix a reserve price which it had not fixed. The order permitting the decree-holder to participate in the auction proceedings was, therefore, illegal and without jurisdiction argued Mr. Kapoor. It was further submitted that the decree-holder was bound to deposit 25% of the amount offered by him in terms of Order XXI, Rule 84(1), CPC which was not deposited and that the transfer of the execution petition pending in the Court of Sub-Judge to the Court of Sub-Judge, First Class where the execution proceedings arising out of the earlier decree were pending without notice

to the judgment-debtor was illegal. He also referred to the various interim orders passed by the Executing Court to show that the Court had acted arbitrarily and thereby illegally deprived the judgment-debtor of his property.

7. Relying upon the decision of this Court in *Mahakal Automobiles and Anr. v. Kishan Swaroop Sharma*, 2008 (13) SCC 113 : (AIR 2008 SC 2061) it was urged by Mr. Kapoor that notice upon the judgment-debtor whose property was being sold was necessary and any sale in the absence of such notice was a nullity. Reliance was also placed on the decisions of this Court in *Ambati Narasaya v. M. Subba Rao* 1989 (Suppl) 2 SCC 693 : (AIR 1990 SC 119); *S.P. Chengalvaraya Naidu v. Jagannath*, 1994 (1) SCC 1 : (AIR 1994 SC 853); *A.R. Antulay v. R.S. Naik and Anr.*, 1988 (2)

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SCC 602 : (AIR 1988 SC 1531), in support of the submission that the procedure adopted by the Executing Court was neither just nor fair and not even in accordance with the provisions of the CPC. Mr. Kapoor also made a grievance against the dismissal of the first appeal preferred by the judgment-debtor in limine, by a non-speaking order. He submitted that although the Division Bench had while disposing of the Letters Patent Appeal by the impugned judgment gone into the merits of the contentions urged by the appellant yet the same did not cure the defect in the order passed by the Single Judge whereby the first appeal filed by the appellant had been dismissed without recording any reasons.

8. The litigation between the parties has a chequered history and has passed through different stages. The first stage led to an order of attachment of the property in question, issue of a sale proclamation, confirmation of the sale in favour of the decree-holder by the Executing Court and the grant of sale certificate to her.

Except two, each one of the contentions urged by Mr. Kapoor before us relate to the procedure adopted and the order passed by the Executing Court up to the stage of confirmation of the sale in favour of the decree-holder. All these contentions were urged by the appellants before the Executing Court who rejected the same and before the High Court who dismissed the appeals filed before it. The view taken by the Executing Court and by the High Court in regard to the issues raised by the appellants has attained finality with the dismissal of the Special Leave Petition filed against the said orders whereby the confirmation of sale in favour of the decree-holder as also the grant of sale certificate to her was declared to be valid. Any attempt to reagitate the very same questions that stand concluded by the said judgment and orders is, therefore, futile if not a clear abuse of the process of law. In particular the question whether the decree under execution was a mortgage decree or a simple money decree, was answered in favour of the decree-holder and the decree held to be a mortgage decree. Similarly the question whether non-deposit of 25% of the bid amount by the decree-holder, who was permitted to participate in the auction by the Executing Court rendered the sale in her favour was answered against the appellants herein. Relying upon the decision of this Court in *Manilal Mohanlal Shah and Ors. v. Sardar Syed Ahmed Sayed Mahmud and Anr.*, AIR 1954 SC 349, the Executing Court held that where the decree-holder was himself the purchaser the requirement of making a deposit of 25% of the bid money was not attracted. So also the challenge to the compromise entered into between the parties on the ground that the same was fraudulent was repelled by the Executing Court and the compromise held to be valid in law. In appeal against the order dated 30.8.1979 passed by the Executing Court, the learned Single Judge of the High Court affirmed the view taken by the Executing Court and declared that a compromise could be recorded even in execution proceedings and that the

bald allegations suggesting a fraud were wholly untenable. The dismissal of the Letters Patent Appeal and the special leave petition against the said orders by this Court has placed all these aspects beyond the pale of any further challenge or controversy. It follows that all contentions relating to the validity of the confirmation of sale in favour of the decree-holder and the issue of a sale certificate in her favour which stand finally determined against the appellants in terms of the judgments and orders of the Executing Court and the High Court in the first round, stand concluded and cannot be re-agitated. Reliance upon the decisions of this Court cited by Mr. Kapoor, is therefore, of no assistance to him.

9. In the second round which started with a fresh set of objections raised by the judgment-debtor, the Executing Court once again examined the matter and rejected

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the objections by an order dated 25th September, 1984. The Executing Court held that the questions raised by the judgment-debtor stood answered by the earlier orders passed by the Executing Court and upheld by the High Court in appeal. The contention that the compromise between the parties extinguished the decree and was a complete adjustment within the meaning of Order XXI, Rule 2 was also repelled. The Court held that the decree continued to subsist till the judgment-debtor delivered possession of the premises in terms of the compromise. The court accordingly issued warrants for delivery of possession to the decree-holder. It is common ground that the view taken by the Executing Court in the said order has also attained finality as no appeal or other proceedings were filed against the same. In the above background, any effort to rekindle the controversy surrounding aspects which stand finally decided must necessarily fail.

10. The third round of proceedings it is noteworthy started with the objections raised by the judgment-debtor leading to the passing of an order dated 5th October, 1987 by the Executing Court. The Court formulated as many as 14 issues which the judgment-debtor sought to agitate in opposition to the execution of the decree and held that all of them except Issue Nos. 7 and 9, stood decided by the Executing Court against the judgment-debtor in terms of its orders dated 30th August, 1979 and 25th September, 1984. The Executing Court said:-

"In the light of the circumstances stated above, I am of the opinion that the contentions forming the subject-matter of issue Nos. 1, 2, 3, 4, 5, 6, 8, 10, 11, 12 and 13 have already been gone into and decided against the JD on merits. Orders dated 30.8.1979 and 25.9.84 of Sarvshri B.C. Rajput and Jagroop Singh learned Sub-Judge, 1st Class, respectively in this behalf have become final and binding on the JD. It is thus no more open to me to go into these questions and decide them afresh. I, therefore, do not feel it necessary to dilate upon the case law cited qua these issues."

11. As far as issues Nos. 7 and 9 are concerned, the Executing Court decided the same also in favour of the decree-holder and held that the application filed by the decree-holder was within time and maintainable in law. The said order when assailed before the High Court in FAO No. 502 of 1979 was upheld and the appeal dismissed in limine by the learned Single Judge of the High Court. Letters Patent Appeal No. 167 of 1989 assailing the said dismissal also met the same fate. The Division Bench noted that the questions sought to be raised in the third round of the proceedings had been dealt with and answered against the judgment-debtor in terms of the earlier orders passed by the Executing Court and the Appellate Court in appeal. There is, in our opinion, nothing wrong with that view to warrant interference. The High Court has taken pains to recall the history of the litigation, the

issues that were raised from time to time and the judgments that determined those issues. It was justified in taking the view that the judgment-debtor had successfully prevented delivery of possession of the property to the decree-holder for such a long time even after the sale of the property in her favour which was found by all the courts including this Court to be perfectly valid in law. The argument that even after the sale was declared to be legally valid, the decree-holder could not demand delivery of possession, as the decree stood fully adjusted and satisfied was also rightly rejected by the Executing Court, in its order dated 25.9.1984 against which the judgment-debtor had sought no redress.

12. That brings us to the question whether the Division Bench of the High Court

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committed a mistake in ignoring the fact that the Single Judge who dismissed the first appeal filed by the judgment-debtor had recorded no reasons in support of the order passed by him. It was, according to Mr. Kapoor, necessary for the Single Judge to give reasons in support of the order made by him howsoever brief the same may have been. The absence of any reason in the order passed by the Single Judge was, argued the learned counsel, sufficient for the Division Bench to set aside the same and remit the matter back for a fresh disposal in accordance with law. Inasmuch as the Division Bench ignored that legal deficiency in the order and proceeded to decide the appeal on merits, it committed a mistake that ought to be corrected by this Court, was the only submission made by Mr. Kapoor that merits consideration.

13. The juristic basis underlying the requirement that Courts and indeed all such authorities, as exercise the power to determine the rights and obligations of individuals must give reasons in support of their orders has been examined in a

long line of decisions rendered by this Court. In *Hindustan Times Limited v. Union of India and Ors.*, 1998 (2) SCC 242 : (AIR 1998 SC 688) the need to give reasons has been held to arise out of the need to minimize chances of arbitrariness and induce clarity. In *Arun s/o Mahadeorao Damka v. Addl. Inspector General of Police and Anr.*, 1986 (3) SCC 696 : (AIR 1986 SC 1497) the recording of reasons in support of the order passed by the High Court has been held to inspire public confidence in administration of justice, and help the Apex Court to dispose of appeals filed against such orders. In *Union of India and Ors. v. Jai Prakash Singh and Anr.*, 2007 (10) SCC 712 : (AIR 2007 SC 1363), reasons were held to be live-links between the mind of the decision-maker and the controversy in question as also the decision or conclusion arrived at. In *Secretary and Curator, Victoria Memorial Hall v. Howrah Ganatantrik Nagrik Samity and Ors.*, 2010 (3) SCC 732 : (AIR 2010 SC 1285), reasons were held to be the heartbeat of every conclusion, apart from being an essential feature of the principles of natural justice, that ensure transparency and fairness, in the decision-making process. In *Ram Phal v. State of Haryana and Ors.*, 2009 (3) SCC 258 : (AIR 2009 SC (Supp) 1410), giving of satisfactory reasons was held to be a requirement arising out of an ordinary man's sense of justice and a healthy discipline for all those who exercise power over others. In *Director, Horticulture Punjab and Ors. v. Jagjivan Parshad*, 2008 (5) SCC 539 : (AIR 2008 SC (Supp) 327), the recording of reasons was held to be indicative of application of mind specially when the order is amenable to further avenues of challenge.

14. It is in the light of the above pronouncements unnecessary to say anything beyond what has been so eloquently said in support of the need to give reasons for orders made by Courts and statutory or other authorities exercising quasi judicial functions. All that we may mention is that in a system governed by the rule of law,

there is nothing like absolute or unbridled power exercisable at the whims and fancies of the repository of such power. There is nothing like a power without any limits or constraints. That is so even when a Court or other authority may be vested with wide discretionary power, for even discretion has to be exercised only along well recognized and sound juristic principles with a view to promoting fairness, inducing transparency and aiding equity.

15. What then are the safeguards against an arbitrary exercise of power? The first and the most effective check against any such exercise is the well recognized legal principle that orders can be made only after due and proper application of mind. Application of mind brings reasonableness not only to the exercise of power but to

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the ultimate conclusion also. Application of mind in turn is best demonstrated by disclosure of the mind. And disclosure is best demonstrated by recording reasons in support of the order or conclusion.

16. Recording of reasons in cases where the order is subject to further appeal is very important from yet another angle. An appellate Court or the authority ought to have the advantage of examining the reasons that prevailed with the Court or the authority making the order. Conversely, absence of reasons in an appealable order deprives the appellate Court or the authority of that advantage and casts an onerous responsibility upon it to examine and determine the question on its own. An appellate Court or authority may in a given case decline to undertake any such exercise and remit the matter back to the lower Court or authority for a fresh and reasoned order. That, however, is not an inflexible rule, for an appellate Court may notwithstanding the absence of reasons

in support of the order under appeal before it examine the matter on merits and finally decide the same at the appellate stage. Whether or not the appellate Court should remit the matter is discretionary with the appellate Court and would largely depend upon the nature of the dispute, the nature and the extent of evidence that may have to be appreciated, the complexity of the issues that arise for determination and whether remand is going to result in avoidable prolongation of the litigation between the parties. Remands are usually avoided if the appellate Court is of the view that it will prolong the litigation.

17. In the present case the appellate Court appears to have decided against remanding the matter to the Single Judge on the ground of absence of reasons in the order passed by the latter because any such remand would have only prolonged the agony of the parties. From a reading of the impugned order of the appellate Court it is clear that the appellate Court was conscious of the fact that the litigation had been prolonged for many years. It, therefore, decided to resolve the matter on merits rather than remitting the same back for a fresh disposal by the learned Single Judge. Inasmuch as the appellate Court adopted that approach it did not, in our opinion, commit any mistake to warrant our interference under Article 136 of the Constitution. The litigation between the parties having continued for three decades, the discretion vested in the appellate Court and was rightly exercised by it. The submissions made by Mr. Kapoor that the appellate Court ought to have remitted the matter back to the Single Judge must, therefore, fail and is hereby rejected.

18. In the result this appeal fails and dismissed but in the circumstances without any order as to costs.

Appeal Dismissed .