

CIVIL MISCELLANEOUS

Before R. P. Khosla, J.

N. R. BATRA,—Petitioner

versus

S. PREM SINGH AND OTHERS,—Respondent.

Civil Miscellaneous No. 1665-C of 1957.

Constitution of India (1950)—Article 226—Proceedings under—Whether Civil in nature—Code of Civil Procedure (V of 1908)—Sections 145 and 151—Security for mesne profits given during the pendency of the writ petition—Whether can be enforced by execution.

1958
 Oct., 23rd

Held, that the proceedings in Civil Writs under Article 226 of the Constitution are analogous and akin to proceedings in civil suits and the security for mesne profits given during the pendency of the writ petition to obtain the stay of delivery of possession is enforceable by execution under Sections 145 and 151 of the Code of Civil Procedure and it is not necessary to file a suit on the basis of the surety-bond. The security was filed in pursuance of the order of the High Court and any dispute arising and relief claimed in respect of the said security will have to be enforced in that Court.

Application under section 151, Civil Procedure Code, praying that the mesne profits due to the petitioner be directed to be paid by the respondents and in case of failure of the respondents 1 to 4 to pay; they may be ordered to be recovered from the Surety and the respondents;

A. M. SURI, for Petitioner.

H. S. GUJRAL, for Respondents.

ORDER

R. P. Khosla, J. R. P. KHOSLA, J.—On or about 18th August, 1953, Shri N. R. Batra got allotted 112 standard acres 7 units in village Ratauli (Jagadhri). This allotment was effected after cancelling allotment of some land originally allotted in favour of respondents, Prem Singh, his brother Narain Singh

and wife Raj Kaur. Civil Writ No. 269 of 1953 was filed by Prem Singh, his brother and wife challenging the proceedings relating to the allotment in their favour. Civil Writ No. 269 of 1953 finally got dismissed on 18th October, 1955. Prem Singh, etc., moved this Court by Civil Miscellaneous No. 883/C of 1955 on 28th October, 1955, for leave to appeal to the Supreme Court and obtained *ex parte* stay order in the terms as under:—

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“Stay on furnishing security for mesne profits.”

Prem Singh, etc., however, did not furnish any security in this behalf and on 10th July, 1956, this Court ordered in continuation of the last stay order in the following terms:—

“Two weeks’ time allowed to give security for mesne profits for two years at the rate of Rs. 10,000 per year.”

Prem Singh, etc., filed the necessary security. One Daswant Singh stood surety. Necessary bond in that behalf was filed in this Court. The appeal by Prem Singh, etc., got heard in the Supreme Court and resulted in dismissal.

After the dismissal of the said appeal by the Supreme Court, Mr. Batra moved this Court by Civil Miscellaneous No. 1665/C of 1957 on 4th December, 1957, praying for the giving of effect to the stay order dated the 10th July, 1956. It was submitted that the mesne profits, as contemplated by the stay order, be made payable from Prem Singh, etc., failing them, from the surety. In Civil Miscellaneous No. 1665/C of 1957 notice was issued to Prem Singh, etc., and the surety. On the surety not having been served and the allegations made that service was wilfully evaded, this

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Court was moved on 15th May, 1958, by Mr. Batra praying for temporary injunction meanwhile restraining the respondents—Prem Singh, etc.,—from selling their properties. Temporary injunction as prayed for was granted by this Court. On 25th July, 1958, Prem Singh, etc., filed Civil Miscellaneous No. 1046/C, of 1958, seeking vacation of the said temporary injunction. This judgment will dispose of both Civil Miscellaneous No. 1665/C of 1957 and No. 1046/C of 1958.

The learned counsel for the respondents (Prem Singh, etc.) in Civil Miscellaneous No. 1665/C of 1957, urged that the security for mesne profits could not be enforced by this Court either under section 145 or 151 of the Code of Civil Procedure. It was contended that the remedy of the applicant Batra was by a regular suit, for the surety by the terms of the bond executed had hypothecated his property and created a mortgage as well as made his person liable under the terms of the bond and to enforce such a contract the parties had to have recourse to the ordinary civil Courts. It was also contended that for the terms and for the bond not having been executed in favour of this Court, the same could not be enforced in the present proceedings. It was further urged by the learned counsel that the reading of section 145 of the Code of Civil Procedure showed that the provisions apply to suits or proceedings arising from or consequent thereupon. The civil writ proceedings, it was maintained were not such proceedings. To support this contention, the learned counsel cited *Ko Maung Gyi and others v. Daw Tok* (1), *Sm. Bhagwanti v. New Bank of India Ltd.* (2), and *Khushiram Tejbhandas v. Jhalibai and others* (3).

(1) A.I.R. 1928 Rang. 249.

(2) A.I.R. 1950 East Punjab 111 (F.B.).

(3) A.I.R. 1926 Sind. 35.

Mr. Suri, learned counsel appearing for the applicant in Civil Miscellaneous No. 1665/C of 1957 controverted the above-stated proposition and successfully distinguished the cases cited on behalf of Prem Singh, etc. It was in the first instance urged that proceedings in civil writs were analogous to proceedings in suits and that section 145 of the Code of Civil Procedure applied to civil writs both in spirit and terms. Support in this behalf was sought from decision in *Sardar Kapur Singh v. The Union of India* (1). One of the questions referred to the Full Bench for decision was whether the proceedings in a writ under Article 226 of the Constitution were civil proceedings. The observations made while answering and determining the question do lend support to the contention of the learned counsel. Civil Proceedings were defined as a judicial process to enforce a right and included any remedy employed to vindicate that right. The definition propounded, therefore, clearly covered civil writ proceedings. Proceeding the learned counsel contended that the cases cited by the counsel for the opposite party were distinguishable. After a pointed reference and examination of the said cases, it was submitted that *Ko Mounng Gyi and others v. Daw Tok* (2) was a case under the Succession Act and could not be an authority for the proposition in question. When considering the question whether section 145 of the Code of Civil Procedure applied or not, Das, J., observed—

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“There is no suit in which the appellants render themselves liable as sureties. The proceeding for the grant of letters of administration is not a suit though it may take the form of a suit. The

(1) (1957) 59 P.L.R. 331 (F.B.).
(2) A.I.R. 1928 Rang. 249.

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appellants only render themselves liable under the terms of the administration bond and the only way to proceed against them would be to obtain an assignment of the administration bond as provided by section 292, Succession Act."

Consequently, section 145 of the Code of Civil Procedure was held not to apply. Similarly, *Khushiram Tejbhandas v. Jhalibai and others* (1)—a case under the Guardians and Wards Act—was distinguished to have been decided on its own facts. It was submitted that section 35 of the Guardians and Wards Act provided for the enforcement of the specific bond by way of a suit and the case could have no bearing on the point in hand. *Sm, Bhagwanti v. New Bank of India Ltd.* (2) again was shown not to be in point.

For the view that proceedings in civil writs are analogous and akin to proceedings in civil suits, the conclusion is inescapable that the matter is covered by section 145 of the Code of Civil Procedure. In any event, there could be no bar to the application of section 151 of the Code of Civil Procedure, particularly in view of the observations of their Lordships of the Privy Council in *Kunwar Rohani Ramandhwaj Prasad Singh v. Thakur Har Parsad Singh and others* (3) to the effect that a relief similar to the one as claimed in the instant case was the one which nevertheless was enforceable under the Court's inherent powers. I have for the facts of this case no doubt that it is pre-eminently a fit case for the application of inherent powers of the Court. The stay was granted by this Court in terms to benefit the petitioner in

(1) A.I.R. 1929 Sind; 35.

(2) A.I.R. 1950 East Punjab 111 (F.B.).

(3) A.I.R. 1943 P.C. 189.

continuation of civil writ proceedings launched in this Court. By the said order Prem Singh, etc., avoided delivery of possession of the land in question. The bond with the surety was ordered to secure and protect the interests of Batra. The principals Prem Singh, etc., could not be heard to maintain that under the terms of the order of stay they had no liability whatsoever and Batra should be relegated to seek his remedy against the surety in a civil suit. The surety was filed by Prem Singh, etc., in pursuance of the order of this Court. Any dispute arising and relief claimed in respect of the said stay order will have to be enforced in this Court.

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For all these reasons, I am of the considered view that Prem Singh, etc., as well as the surety are bound to make good the obligations enjoined in pursuance of the stay order in question. I am, however, of the view that Batra, the applicant, was entitled to the actual mesne profits deducible for the duration for which he had been kept out of possession. In this behalf, therefore, it would be necessary to ascertain the actual amount of mesne profits arising for the period in question. I would accordingly direct the Senior Subordinate Judge, Ambala, (where the land in question is situated), to hold an enquiry according to law to determine the actual amount of mesne profits for the material period, which appears to be from 10th July, 1956, when the stay order was granted by the High Court to 13th June, 1957, when the possession of the land was delivered. The relevant records must be sent forthwith to the Court of Senior Subordinate Judge for him to proceed with all expedition in the light of the above observations. The learned Senior Subordinate Judge is further directed to submit his report with the necessary findings to this Court at an early date.

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The parties are directed through counsel to appear before the learned Senior Subordinate Judge, Ambala, for proceedings in this behalf on 17th November, 1958.

As regards Civil Miscellaneous No. 1046/C of 1958, the temporary injunction restraining Prem Singh, etc., from disposing of their entire properties cannot be continued. All that is necessary, in the circumstances of this case, is to secure Batra in regard to the amount to the mesne profits. Keeping that in view, I would modify the injunction order in question to the extent that Prem Singh, etc., would not alienate or deal with their Delhi Property and Delhi business as referred and mentioned in the petition and affidavit dated the 25th July, 1958, in any manner whatsoever till the amount to mesne profits is made good.

Subject to this modifications as indicated the interim order granting injunction will continue.

There will be no order as to costs of these petitions.

R. S.

SUPREME COURT APPEAL

Before Bhandari, C.J. and Chopra, J.

S. SAMARJIT SINGH,—*Petitioner*
versus

THE STATE OF PUNJAB,—*Respondent.*

Supreme Court Appeal No. 28 of 1958.

1958
Oct., 29th

Constitution of India (1950)—Article 133—Final order—Meaning of—High Court dismissing writ petition at preliminary hearing with the word “dismissed”—Whether amounts to “Judgment, decree or final order”—Article 226—Issuance of writs under—Object of.