

GHAZIABAD DEVELOPMENT AUTHORITY, GHAZIABAD

A

v.

SMT. JAIMALA

DECEMBER 2, 1996

[K. RAMASWAMY AND G.T. NANAVATI, JJ.]

B

*Decree passed by Trial Court—Appeal preferred in High Court—During pendency of appeal proceedings for execution of decree initiated—Respondent preferred revision before High Court which granted stay of execution of decree—Without having knowledge about stay counsel appearing for appellant authority made a statement in the executing Court as well as in the High Court that no revision was filed against the order passed by the executing Court—As a consequence, a direction was given in the impugned order to enforce the decree and exemplary costs were awarded—Therefore, the appellant-Authority under threat of contempt executed the sale deed in favour of the respondent—Held, in the view of the fact that sale deed has already been registered in favour of the respondent in execution of the decree, there is no need to go into the question of the legality of the execution, in spite of the order of stay granted by the High Court in the aforesaid revision—The rate of payment to be made by respondent is the subject matter of the dispute in the pending appeal—Under these circumstances, the execution of the sale deed will be subject to the result in the appeal—But imposition of exemplary costs by High Court held not warranted.*

C

D

E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 15611 of 1996.

F

From the Judgment and Order dated 10.5.96 of the Allahabad High Court in C.R. No. 352 of 1995.

O.P. Rana and S. Kulshreshtha for the Appellant.

Gopal Prasad and Ejaz Maqbool for the Respondent.

G

The following Order of the Court was delivered :

Leave granted.

We have heard learned counsel on both sides.

H

A This appeal by special leave arises from the order of the High Court of Allahabad, made on May 10, 1996 in CR No. 352 of 1995. It is not necessary to narrate all the facts relating to the controversy in execution. It is now not in dispute that against the decree of the trial Court, the appeal has been filed in the High Court. The appeal is now pending. When the respondent had taken out execution of the decree of the trial Court, the respondent had also filed another Revision No. 56/95 and the High Court has granted stay on May 15, 1995 of the execution of the decree. Thereafter without knowledge, the learned counsel appearing for the appellant, appears to have made a statement in the executing Court as well as in the High Court that no revision was filed against the order passed by the executing Court. As a consequence, a direction was given in the impugned order to enforce the decree and exemplary costs were awarded. However, the learned counsel for the respondent has brought to our notice that the Court has stayed the execution of the decree and the appellant have under threat of contempt executed the sale deed in favour of the respondent. In view of the fact that sale deed has already been registered in favour of the respondent in execution of the decree, we decline to go into the question of the legality of the execution, in spite of the order of stay granted by the High Court in the aforesaid revision. However, whether the respondent requires to pay at the rate of Rs. 500 per sq. yd. or at the rate of Rs. 800 per sq. yd. is the subject matter of the dispute in the pending appeal. Under these circumstances, the execution of the sale deed will be subject to the result in the appeal. Accordingly the imposition of the exemplary costs by the High Court for a sum of Rs. 25,000 is not warranted on the facts in this case and is accordingly set aside.

F The appeal is accordingly allowed to the above extent. No costs.

T.N.A.

Appeal allowed.