

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.1732 of 2015

Date of Decision.19.03.2015

Smt. Sham Piari and others

.....Petitioners

Versus

Smt. Sawarn Lata and others

.....Respondents

Present: Mr. K.S. Cheema, Advocate
for the petitioners.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J. (ORAL)

1. The judgment debtor who faces a threat of eviction has argument to make that the decree sheet is not available in the file and decree itself is not prepared. There was a direction at the time when the judgment was delivered that the plaintiff was to pay court fee of certain amount failing which the suit shall be dismissed. The judgment debtor's contention is that the court fee was not paid and therefore, the decree was not prepared and there is no executable decree.

2. The counsel would point out to me the fact that on a previous occasion on 21.10.1995, the Court which was examining records for issuing delivery examined the situation of whether a decree was prepared when the counsel was prepared to affirm that a decree had been prepared. The Court was, therefore, calling for the records in the year 1995. It appears that no further orders were passed till 09.10.1999 when the subsequent incumbent Judge observed that the file had not

been received but the decree sheet and Ex.P7 report of the lower Court was already on the file and on that basis the warrant of possession had been issued.

3. The learned counsel would argue that when a particular Presiding Officer found that there was no decree sheet and called for file and the subsequent Judicial Officer had also noticed the fact that the file had not been received, he was making a reference to decree sheet as available in the file which cannot be true. He seeks the vindication of his stand by reference to the fact that he had applied for copy of the decree sheet and the Court had returned that there was no decree sheet filed in the execution petition.

4. There is a certain difficulty that obtains in the case to secure an original file and to examine whether the decree was prepared and the court fee had been paid or not. It is on account of the fact that the original papers appear to have been burnt and the original case papers are not, therefore, available. The case that has to be seen is whether the person claiming to be decree holder was attempting to execute a non-existent decree. It would appear that yet another judgment debtor had taken up the same contention and was before this Court on a plea that there is no executable decree. This Court has rejected such a plea through its order dated 18.02.2010 in C.R. No.6492 of 2009 titled "Sheela and others Vs. Swaran Lata and others", the Court has observed the contention brought before the Court by the respective counsel and has observed as follows:-

"Learned counsel for the petitioners was also unable to controvert the argument of the counsel for the respondent (decree holder) to the effect that the factum of affixation

of the full court fee is mentioned in the decree drawn by the Court in pursuance to the judgment dated 17.11.1981."

5. The matter must reside there. The argument brought by the judgment debtor that there is no executable decree is not tenable and the judgment debtor is trying to make capital of the situation of the file being not available. The judgment debtor shall vacate and if there is a warrant of possession, it shall be carried out as expeditiously as possible.

6. The revision petition is dismissed.

(K. KANNAN)
JUDGE

March 19, 2015
Pankaj*