

**THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No. 2986 of 2013 (O&M)

Date of decision: March 13, 2015

B.L. Sharma

...Petitioner

Versus

Smt. Tajinder Narula and others

...Respondents

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?

Present: Mr. Vikas Kumar, Advocate,
for the petitioner.

Mr. Rohit Ahuja, Advocate,
for respondents No. 1 to 3.

K. KANNAN, J. (Oral)

1. The 2nd defendant has a grievance in the execution of the decree for recovery of whole of the amount against him on the ground that what was paid to him was only Rs. 50,000/- and rest of the amount of Rs. 4 lacs must be recovered only from the 1st defendant. The 1st defendant is his wife. Against the decree an appeal had also been filed and that was dismissed.
2. The counsel wants to make much of the fact that in the judgment of the trial court, while dismissing the claim for specific performance and ordering only the alternative relief of recovery of the amount paid, it has been observed as under:-

“However, alternatively plaintiffs are entitled for the recovery of the amount, which they paid to the defendants at various

stages. Plaintiffs have paid Rs. 4,50,000/- in totality to the defendants at various stages and occasions and the plaintiffs are entitled to recover the amount, which they have already paid to the defendants...”

3. The amounts paid at various stages, according to the counsel, must be understood as the respective defendants making payments on various dates. Even according to the plaintiffs, only Rs. 50,000/- was paid to the 2nd defendant, that alone could be recovered.

4. The contention is untenable. In Indian law, a liability that is set out as joint shall be treated as joint and several liability. If the decree states that the plaintiff shall be entitled to Rs. 4,50,000/- and sets out the amounts paid in totality to the defendants, it will be paid by the defendants. The liability cannot be dissected at all. If tenable, the defendant may seek for contribution from the co-defendant, after making payment the whole amount by resorting to the 'third party procedure' provided under Order 8A CPC of a claim against co-defendants for contribution. As far as the entitlement of the decree-holder is concerned, he is entitled to execute in the manner the decree provided for. The objections taken by the judgment-debtor is not tenable and rightly rejected.

5. The revision petition is dismissed.

March 13, 2015
prem

(K.KANNAN)
JUDGE