

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR No.4703 of 2014.

Decided on:-February 18, 2015.

Rishi Raj Chauhan and anotherPetitioners.

Versus

Arun Sharma.Respondent.

CORAM: HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON.

Argued by:- Mr. C.B. Goel, Advocate
for the petitioners.

Mr. Shekhar Verma, Advocate
for the respondent.

Dr. Bharat Bhushan Parsoon, J.

Order dated 9.7.2014 of the lower court where decree dated 8.2.2013 based on compromise (Ex.C1) is pending execution, forms genesis of this revision petition. The judgment-debtors (for short, the JDs), petitioners herein, have claimed that the compromise goes beyond the pleadings of the parties and overflows from the relief originally sought by the plaintiff in the plaint. Rejecting claim of the JDs, the trial court has given its firm finding that the decree-holder is entitled for execution of sale deed in his favour.

2. In this revision petition, claim of the JDs, petitioners herein, that the decree dated 8.2.2013 is not commensurate with the relief sought by

the plaintiff nor the Executing Court exceeding its jurisdiction could have ordered for execution of the sale deed in favour of the decree-holder, particularly when the suit in which the compromise was effected was simply for seeking a decree of permanent injunction and a separate suit seeking specific performance of the agreement dated 16.11.2012 is pending disposal and the same has been adjourned sine die at the request of the plaintiff as compromise was made in the earlier suit. It is claimed that even criminal complaint filed by the respondent-plaintiff before a criminal court alleging fraud and forgery against the judgment-debtors has been dismissed having been found to be of no merit and petitioners-JDs, accused therein, have been discharged therein.

3. Counsel for the respondent/decreed-holder, on the other hand, has urged that collateral issues are inconsequential particularly when the decree under execution is based on compromise which was volitionally entered into by the petitioners-JDs. Referring to Order XXIII Rule 3 CPC, it is claimed that in compromise, the relief can go even far and beyond the one sought in the plaint and the decree cannot be said to be unexecutable even if it goes farther and beyond the relief sought in the plaint, if settlement between the parties permits grant of such relief to the plaintiff.

4. Hearing has been provided.

5. At the outset, it may be mentioned that merely because compromise (Ex.C1) forming foundation of the decree dated 8.2.2013 goes beyond the relief sought in the plaint by the respondent-plaintiff, ipso-facto is no ground to stall the execution petition. Even if the suit was for seeking a decree of permanent injunction but in the compromise (Ex.C1) if the liberty has been given to the plaintiff to get the agreement to sell enforced by way of execution of sale deed against the defendants-JDs, the same is permissible keeping in view the provisions of Rule 3 of Order XXIII CPC, which for

ready reference is reproduced as below:

“3. Compromise of suit— Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit.

Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.”

6. In ***Suraj Mal Versus Shiv Lal and another 2004(1) RCR (Civil) 410 (P&H)***, it was held that even if property not originally included in the plaint is made to be subject matter of the compromise which is entered into between the parties, neither validity of such decree can be questioned in the proceedings for execution of such compromise decree nor maintainability of such execution petition can be questioned. Reference in this regard may be made to ***Vasudev Dhanjibhai Modi Versus Rajabhai Abdul Rehman and others 1970 AIR (SC) 1475*** wherein it was further held that the Executing Court is to execute the decree between the parties as it stands and is not to go to the question as to which relief had been sought by the plaintiff in the suit. In this authority, Hon’ble Apex Court had gone even to the extent of holding that a decree even if it be erroneous is binding between the parties until the same is set aside by an appropriate proceeding in appeal or revision. Support can also be sought from ***Pushpa Devi Bhagar (D) through LR Smt. Sadhna Rai Versus Rajinder Singh and others***

2006(3) RCR (Civil) 479 (SC); Deepa Bhargava and another Versus Mahesh Bhargava and others 2009(1) RCR (Civil) 507 (SC) and The State of Madhya Pradesh Versus Mangilal Sharma 1998(1) CLR 395 (SC) wherein similar view has been taken by Hon'ble Apex Court.

7. Argument of the counsel for the petitioners-defendants-JDs that the compromise (Ex.C1) is result of fraud and forgery is not available to them before the Executing Court. Relevant observations of the lower court in this regard with approval are reproduced as under:

*“Therefore, when the parties themselves appeared in person before the court and got their statements recorded in the court on oath the compromise, the plea of fraud and misrepresentation is not available to the parties as the statements made in the court carries authenticity and cannot be lightly brushed aside. The proceedings before the court are sacrosanct in nature and are required to be respected. Therefore, the contention of the judgment-debtors that the compromise was obtained by the decree holder by playing fraud and misrepresentation cannot be entertained at all. The reliance in this regard may be placed on **Jagat Singh (deceased) Vs. Babu Singh 2005(2) RCR (Civil) 268 (P&H); Lali Devi and others Vs. Jai Singh and others (supra)** and **Jagtar Singh Vs. Balbir Singh 1990 PLJ 17 (P&H)**.*

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X

“Further, as above stated the plea of fraud and misrepresentation is not available to the judgment-debtors, the judgment-debtors cannot question the legality and validity of the terms and conditions of compromise Ex.C1 before the executing court.”

8. Merely because during pendency of the suit for seeking a decree of permanent injunction, yet another suit for seeking specific performance of the contract had been instituted but in the meanwhile, the parties had settled the matter among themselves and a consent decree had been passed by the court thereon whereby liberty in terms of the settlement was granted to the

decree-holder even for execution of the sale deed from the JDs in view of the provisions of Rule 3 of Order XXIII CPC, the same is permissible. This point was raised by the counsel for the objectors, petitioners herein, even before the court below and has rightly been dealt with and answered correctly by the said court in the following terms:

*“Accordingly the argument of the judgment-debtors that the compromise is beyond prayer clause of the suit for permanent injunction is not sustainable. The similar question arose before the Hon'ble Punjab and Haryana High Court in **Suraj Mal Vs. Shiv Lal and another 2004(1) RCR (Civil) 410 (P&H)** wherein it was held that the execution of compromise decree is maintainable and the same can be executed by the executing court even if the compromise is beyond subject matter of the suit. This court is to see whether the execution petition is maintainable or not and it has already been discussed above that the execution petition is maintainable, mere fact that the suit for specific performance has been got adjourned sine die by the decree holder has no bearing on the merits of this execution petition.”*

9. Viewed from another angle, compromise (Ex.C1) forming foundation of the decree has already been acted upon by deposit of Rs.45 lacs in terms thereof. Contention of the petitioners-JDs that compromise (Ex.C1) does not empower the Executing Court to get the registration of the sale deed in favour of the decree holders, also is wrong when compromise (Ex.C1) and the decree under execution is read in conjunction with each other. It is clear and firm that any question with regard to execution, discharge and satisfaction of the decree is to be determined by the Executing Court in terms of Section 47 CPC and that is what has been done by the Executing Court in the impugned order.

10. The objection petition is nothing but a malafide exercise ventured merely to delay the execution of decree dated 8.2.2013. Even observations to this effect have been made in the impugned order to the

following effect:

“Further, no question of court fee is involved as the decree was passed on the basis of compromise. Accordingly, there is no merit in the objections to the execution petition taken by the judgment-debtors. It appears that all the objections to the execution petition have been taken by the judgment-debtors with the malafide intent to delay the execution of the decree dated 8.2.2013. The objections taken by the judgment-debtors are dismissed being meritless.”

11. Sequelly, no ground to interfere with the impugned order is made out and affirming the same, this petition, being devoid of any merit, is dismissed.

February 18, 2015
‘Yag Dutt’

(Dr. Bharat Bhushan Parsoon)
Judge

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