

224.

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

Civil Revision No.5401 of 2013 (O&M)

Date of decision: 03.12.2015

Jagjivan Singh

... Petitioner

versus

Gurdip Singh alias Deepa and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Sandeep Arora, Advocate,
for the petitioner.

Ms. Jyoti Sareen, Advocate,
for respondent No.1.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ?No.

K.Kannan, J. (Oral)

1. The revision petitioner is the decree holder who has obtained an award by way of settlement before the Lok Adalat held on 25.02.2006. Against a claim of ₹4 lakhs, the parties had given statement and recorded by the court on 06.02.2006 that an amount of ₹20,000/- will be given on or before 25.02.2006 and ₹45,000/- will be paid on 01.10.2006. After the statement was recorded, the matter was placed before the Lok Adalat. On 25.02.2006, the court disposed of the case and passed an award stating that an award of

₹65,000/- was being passed in favour of claimant and against the respondents as per the agreed terms and conditions. The award also provided for a default clause that if the amount was not paid as agreed upon, the claimant would be entitled to recover the whole of the amount in lumpsum with interest. On the same day, the docket order by the Presiding Officer was that the settlement had been effected in view of the statement of parties recorded on 06.02.2006 and, therefore, separate award has been prepared and settled amount has been received by the party concerned.

2. The grievance of the decree holder was that the amount as settled had not been given and an execution petition was filed. There had been an attachment issued, which was later withdrawn after some contest. There was an attachment again and the judgment debtor filed a petition seeking for raising of attachment and stating that the entire amount of ₹65,000/- had already been paid and the fresh execution petition filed was not justified. The court accepted the contention and raised the attachment and directed that no amount was recoverable.

3. The decree holder, who filed the revision petition, contended that the party had actually received ₹20,000/- on 25.02.2006 as per the statement already given in court by the defendant and he will be satisfied if the court passed an order for ₹45,000/- which was still remaining unpaid. According to him, the

award which was passed was in terms of the agreement and it also provided that the amount would be recovered within the time as agreed and if there was a default, the claimant would be entitled to execute for the whole amount with interest at 6% per annum. The default clause could not have been used in the award if the whole of the amount had indeed been paid. The judgment debtor was trying to take advantage of an inartistic expression used that the settled amount had been received by the party concerned to mean that the entire ₹65,000/- had been paid.

4. It was a situation where the Lok Adalat made express stipulation in the award that if the payment as agreed had not been paid, the claimant would be entitled to receive the whole of the amount. The court was disposing of the case on the basis of the statement and reference to settled amount as paid must be only the manner in which the settlement had been arrived at and it was doubtful whether the whole of the amount could have been paid. However since there was a positive assertion by the respondent that the whole of the amount had been paid and the party would be willing to come to court to vouch for his assertion, I had directed the respondent to be present in court. I have examined him as a court witness by exercising the power under Section 165 of the Evidence Act to elicit an appropriate statement in the interest of justice.

5. The defendant was making out a case as though that he had made the entire money ready by selling his tractor even 3 weeks before the date when he appeared in Lok Adalat. If that was the situation, there was no scope for the defendant to provide to himself two different dates for making the payment in installment. Indeed in the first portion of his statement made in court, he has admitted that he was providing to himself two installments, the second installment being 8 months later only to make available the resources for payment. He was not speaking the truth, in my assessment, when he stated that he had raised all the resources even 2 or 3 weeks prior to the Lok Adalat award by selling the tractor. I would read the Presiding Officer's note in the docket made on 25.02.2006 that the settled amount had been received must be understood only as settled amount received in the manner it was stated earlier on 06.02.2006. The manner of settlement provided for two installments and it must be taken that only one installment had been received on that date.

6. The counsel for the respondent points out that the decree holder was making a false case that he had not received any amount at all. I would find that the statement denying any amount is against the term of the award and, therefore, would give no credence to such a statement originally made. In any event that does not really secure prominence when the counsel is prepared to admit that he had actually received one portion of the amount of ₹20,000/- as per the

statement.

7. The counsel for the respondent has also an argument that at two occasions execution petitions filed, one was dismissed for default and another was dismissed and they had become final. There could be any number of execution petitions and there can be no *res judicata* unless a full satisfaction had been made and certified by the court and for an undischarged decree, there could be any number of execution petitions provided it is brought within a period of 12 years from the date of decree/award.

8. The award could be put in execution for recovery of the balance of ₹45,000/- with interest at 6% in the manner provided under the award. Property of the respondent is ordered to be attached for execution process.

9. The impugner order is set aside and the revision petition is allowed on the above terms.

(K.KANNAN)
JUDGE

03.12.2015
sanjeev