

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

CR No.6535 of 2015

Date of decision: 05.10.2015

Shiv Kumar @ Tillu and another

...Petitioners

versus

Hari Parkash and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Shilak Ram Hooda, Advocate,
for the petitioners.

RITU BAHRI, J.

Challenge in this petition is to the order dated 04.09.2015 (Annexure P-8) passed by the executing Court, whereby objections dated 24.12.2014 (Annexure P-4) filed by the judgment debtors-petitioners have been dismissed.

A civil suit No.808 of 2010 was filed by Hari Parkash-plaintiff (now deceased, through his LRs) on 18.09.2010. In that suit, the children of the petitioners were impleaded as defendant Nos. 3 to 5. However, they were minors at that time. Vide judgment dated 31.05.2013, the said suit was decreed. During execution proceedings, the judgment debtors-petitioners filed objections on the ground that in the suit, the plaintiff-decree holder did not make compliance of Order 32 Rules 3 and 4 of CPC regarding appointment of legal guardian of objectors-judgment debtor Nos.3 to 5. As per the petitioners, this objection can be taken by the judgment debtors even during the execution proceedings, therefore, the judgment and decree dated

31.05.2013 was illegal, null and void. Reference was made to the judgments passed in Shri Gurpreet Singh Vs. Shri Chatterbhuj Goel, 1991 PLJ 570 and Virat Pal and others Vs. Mam Raj and others, 2012 (2) LJR 378.

The executing Court, after going through the plaint, came to a conclusion that civil suit No.808 of 2010 was filed against defendant Nos. 1 to 5, in which, objectors-judgment debtor Nos. 3 to 5 were minors and the suit was filed against them through their mother-judgment debtor No.2 namely Deizy wife of Shiv Kumar being their natural guardian and next friend.

Vide impugned judgment and decree dated 31.05.2013 passed by the Civil Judge (Junior Division), Sonapat, all the judgment debtors were directed to vacate the house of decree holder-plaintiff i.e. House No.7/617, situated within the revenue estate of village Garhi Brahmanan, Tehsil and District Sonapat. All the defendants-judgment debtors had jointly filed Civil Appeal No.69 of 2014 against the judgment and decree dated 31.05.2013, which was dismissed on 10.09.2014 by the Court of Additional District Judge, Sonapat. Written statement in the suit was jointly filed by all the judgment debtors-defendant Nos. 1 to 5 and no objection was raised by judgment debtor Nos.3 to 5 regarding non compliance of Order 32 Rules 3 and 4 CPC in their written statement. Judgment debtor Nos. 1 and 2 (petitioners herein) are the parents of minor judgment debtor Nos. 3 to 5. In the written statement, no plea was raised that the interest of judgment debtor Nos. 1 and 2 was adverse to the interest of judgment debtor Nos. 3 to 5. Even the civil appeal was filed by all the defendants-judgment debtors jointly. Hence, the objection regarding non compliance of order 32 Rules 3 and 4 was rightly rejected by the executing Court.

Further, reference has been made to a Full Bench judgment of this Court in Amrik Singh etc. Vs. Karnail Singh etc., 1974 PLR 744, whereby object of Order 32 Rule 3 has been considered. The observations of the Full Bench with regard to interpretation of Order 32 Rule 3 are as under:-

“13. I may, with due respect to the learned Judges, mention that the observations of the Supreme Court in Sangram Singh's case (supra) as to the interpretation to be placed on procedural law were totally ignored as well as the rule that it is not in every case that non-compliance with the provisions of Order 32, Rule 3 makes a decree null and void. The object of Order 32 is to see that no decrees are passed against minors where they are not effectively represented. I have deliberately used the words 'effectively represented' in contradistinction to the 'representation' contemplated by Order 32, Rule 3. If a minor is represented by a guardian-ad *litem* and the interests of the other major defendants are identical with him and those defendants are effectively prosecuting the litigation it can hardly be said that a minor is not effectively represented. Too much insistence on technical provisions of a procedural law can at time lead to absurd results and cause injustice to parties. It is only where a Court comes to the conclusion that the minor was not effectively represented and thus, he was in fact not a party to the proceedings that the result envisaged by the learned Judges would necessarily follow. But where the minor is effectively represented, though technically not in line with provisions of Order 32, Rule 3, the said result will necessarily not follow.

24. After going through the case law cited before me, I have come to the conclusion that each case must be settled on its own facts and it would not be appropriate to lay down any general rule. The crux of the matter is that it has to be seen whether the minor was effectively represented in the litigation. If he was, then the non-compliance with the provisions of Order 32, Rule 3 which are mandatory, would not render the decision void. But if the non-compliance has caused prejudice to the minor or he was not effectively represented, the decision will be void, i.e., the minor can either ignore it or avoid it. This approach is in consonance with justice because where the matter has been properly contested and no prejudice has been caused to the minor, it will be sheer injustice in the other side to re-open the matter again. Litigation is a very expensive affair and the general principle of law is that it should not be encouraged. In this view of the matter, so far as the facts of the present case are concerned, there can be no two opinions

that the minors were effectively represented and no prejudice has been caused to them. Their interests were effectively safeguarded by their brothers, who were co-defendants with them and whose interests were identical. They contested the suit on all conceivable grounds. The learned counsel for the minors has been unable to bring to our notice any evidence or nay contention which would enable us to hold that a wrong decree was obtained.”

The ratio of the aforesaid judgment has been rightly applied to the facts of the present case. In civil suit No. 808 of 2010, written statement had been jointly filed by defendant Nos. 1 and 2 as gardian of minors defendant Nos. 3 to 5. After the suit was decreed, the appeal was also filed jointly, which was dismissed on 10.09.2014.

Another fact, which the executing Court has taken into consideration is that a separate civil suit bearing No.10020/378/14 was filed by objectors/judgment debtors Nos. 3 to 5 titled as 'Shambhu Bhatt & others Vs. Hari Parkash and others' on 09.12.2014, which was pending before the Civil Judge (Junior Division), Sonapat and their application for grant of interim injunction, in that suit, was declined vide order dated 23.12.2014. Thereafter, the present objections were filed on 24.12.2014 in the execution proceedings, which was the outcome of civil suit No.808 of 2010.

The present is not a case, where the interest of the minors was not protected as their parents i.e. defendant Nos.1 and 2 had filed a joint written statement along with them. Moreover, throughout the trial, no plea had been taken by the defendants-judgment debtors that their interest was adversely effected. As per the Full Bench judgment in Amrik Singh's case (supra), the minors were duly represented by co-defendants and their rights were well protected. The suit was duly contested by all the defendants and no prejudice was caused to judgment debtor Nos. 3 to 5 on account of non

compliance of Order 32 Rules 3 and 4 CPC.

In view of the above discussion, no ground is made out to interfere in the impugned order.

Dismissed.

(RITU BAHRI)
JUDGE

05.10.2015
ajp