

CR-283-2016

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IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CR-283-2016

Date of decision : 18.01.2016

Haryana State Industrial Development Corporation Limited and another

... Petitioners

Versus

Rajinder Gautam

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Vishal Garg, Advocate
for the petitioners.

REKHA MITTAL. J.

The present petition has been directed against order dated 15.09.2015(Annexure P1) passed by the Additional Civil Judge (Senior Division), Gurgaon whereby the objection petition against the execution application filed by the respondent, has been dismissed.

Counsel for the petitioners contends that as the respondent / decree holder failed to comply with the condition of the decree in regard to payment of ₹70,350/ along with interest @ 14% per annum plus penal interest within 15 days from the date of decree dated 01.09.2008, it is deemed that suit stood dismissed on 16.09.2008. It is further submitted that the executing Court has wrongly taken into consideration deposit of ₹2,35,000/- made by the respondent vide bank draft No.031848 dated 20.05.2010 by relying upon judgment of this court *Asha Rani Vs. Jasbir*

Singh, 2000(2) RCR (Civil) 530.

I have heard counsel for the petitioners, perused the records and find that the petition is liable to be dismissed.

Before advertng to the submissions made by counsel for the petitioners, it is pertinent to recapitulate a brief history of the case. Rajinder Gautam, the respondent filed a suit for declaration with consequential relief of permanent injunction to assail resumption order dated 20.12.1994 and ejectment order dated 24.07.1997 in respect of the suit property, allotted by the petitioners in favour of the decree holder. The suit was decreed by the trial Court on 01.09.2008 subject to deposit of ₹70,350/- with interest @ 14% per annum plus penal interest, if any, under the rules from the date when the amount fell due within 15 days from that day. It was further directed that in case of failure to deposit the amount, the suit shall be deemed to be dismissed. The judgment and decree passed by the trial Court came to be challenged in an appeal filed before the Additional District Judge, Gurgaon wherein operation of the judgment and decree dated 01.09.2008 was stayed on 01.11.2008. The appeal filed by the petitioners was dismissed by the Ist Appellate Court vide judgment dated 28.01.2009. The objectors further carried the matter in appeal by way of RSA No.1550 of 2009 and the regular second appeal was dismissed on 17.08.2010.

Still not feeling satisfied, the petitioners filed Special Leave Petition No.31994 of 2010 but the same was dismissed on 31.10.2014.

Counsel for the petitioners has not disputed rather fairly conceded that the respondent / decree holder prepared a cheque of ₹2,28,200/- on 18.09.2008 in favour of the judgment debtor i.e. Haryana State Industrial Development Corporation (in short 'the Corporation') but the Corporation refused to receive the same on the pretext that they intend to file an appeal against the judgment and decree passed by the trial Court. As has been noticed hereinbefore, the petitioners kept the litigation alive upto the Hon'ble Apex Court and the matter was finally decided by the Supreme Court on 31.10.2014. It is also an admitted fact that during pendency of the regular second appeal before this court, the respondent deposited an amount of ₹2,35,000/- by way of bank draft No.031848 dated 20.05.2010, encashed by the objector / judgment debtor. The petitioners, despite having lost the litigation upto the Hon'ble Supreme Court of India, had put another effort to wriggle out of their liability created in favour of the respondent after a prolonged litigation for about 20 years by raising an objection in regard to failure of the decree holder to deposit the amount within the stipulated period. As the decree holder had tendered the amount on 18.09.2008 and the respondent / judgment debtor refused to accept the same on the plea that the Corporation intended to file an appeal against the decree of the trial Court and had further accepted payment of ₹2,35,000/- deposited vide bank draft No.031848 dated 20.05.2010, before the SLP was dismissed by the Apex Court, it would be inequitable to accept the petitioners' plea at the cost of

frustrating a decree that has been held to be good and liable to be affirmed throughout. Taking a cumulative view of the entire matter, I do not find any reason to differ with the view taken by the executing Court that does not suffer from any illegality much less being perverse or absurd.

Dismissed.

(REKHA MITTAL)
JUDGE

January 18, 2016.
Davinder Kumar