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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-4431-2014

Date of Decision : February 23rd, 2016

Pushpa Rani

.... Petitioner

Versus

Jaimal Singh

.... Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

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

Present Mr. H.P.S.Ghuman, Advocate,
for the petitioner.

Mr. Vijay Sharma, Advocate,
for the respondent.

SHEKHER DHAWAN, J.

Present revision petition under Article 227 of the Constitution of India for setting aside order dated 29.05.2014 [Annexure P/1] passed by Civil Judge [Junior Division], Nabha whereby objection petition under Order XXI Rule 66 CPC filed by the present petitioner was dismissed.

2. Relevant facts for the purpose of decision of present petition; that Execution Petition was pending before the Court below for satisfaction of recovery decree. It is the case of Judgment Debtor [JD] that compromise was arrived at between the parties on 10.10.2006 and the entire decretal amount was paid by Hakam Singh, nephew of the Judgment Debtor to the Decree Holder and that another matter with one

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Ishar Singh was also got settled. Later on, the Decree Holder developed *mala fide* intention and filed the execution petition. The Decree Holder took the plea that no such compromise was ever arrived at between the parties and no decretal amount was paid.

3. On this, the Court below settled the issues and the parties led their respective evidence. After considering the material evidence available on the file, learned Court below dismissed the Execution Petition while making observation that payment of decretal amount was made on the basis of written compromise and same stands proved on the basis of evidence available before the Court below and as such the present petition before this Court.

4. Learned counsel for the petitioner mainly submitted that first of all, the respondent – JD has not been able to prove that there was any compromise between the parties or any payment was made to the present petitioner and the Court below has recorded erroneous finding.

5. Learned counsel for the petitioner further submitted that as per provisions of Order XXI Rule 2 CPC and Section 47 CPC, in case after passing of decree there is any payment made out of court or a decree of any kind is otherwise adjusted in whole or in part to the satisfaction of the Decree Holder, that has to be recorded by the Court under Order XXI Rule 2 CPC. On this point, reliance was placed on the decisions of Hon`ble Supreme Court in **Padma Ben Banushali & Anr. Vs. Yogendra Rathore & Ors.**, 2006(3) R.C.R. [Civil] 375 and **Lakshmi Narayanan Vs. S.S.Pandian**, 2000 AIR [SC] 2757.

6. While arguing this point, learned counsel for the respondent submitted that the Court below has already considered the entire evidence

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available on the file and returned the findings which do not call for any interference. As far as provisions of Order XXI Rule 2 CPC are concerned, the said provisions have been amended and the said satisfaction is not required in case of Punjab and as such, the present petition is without any merit and the same be dismissed.

7. Having considered the submissions made by learned counsel for the parties and after going through the above cited judgments and provisions of law as envisaged under Order XXI Rule 2 CPC, this Court is of the considered view that Rule 21(3) CPC has been repealed by Section 36 of Punjab Relief of Indebtedness Act, 1934 [for short, "the 1934 Act"] and if any payment is made or compromise arrived at outside the Court, certification by Court is not necessary as per provisions of Section 36 of the 1934 Act. Similar matter was before a Coordinate Bench of this Court in **Devinder Kumar Vs. S. Chandan** 1994 (1) R.R.R. 635 and it was held that in the State of Punjab, by virtue of Section 36 of the Act, sub rule (3) has been omitted. Such a view was also taken by this Court in **Bholu Ram and others Vs. Kanhya and others**, 1963 AIR [Punjab]. The result therefore, is that irrespective of the fact whether payment or adjustment is certified either at the instance of Decree Holder under Sub Rule (1) or within 90 days of adjustment at the instance of Judgment Debtor under sub rule (2), such payment cannot be pleaded as a defence if the Decree Holder takes out execution of the decree. As per Section 36 of the Act, Sub rule (3) has been repealed. More so, the executing Court on appreciation of oral evidence found that the decree stood satisfied on account of payment and that is a pure question of fact and no revision is maintainable against such an order. Such a view was also taken by this

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Court in **Devinder Kumar's case [supra]**.

8. In view of the above, there are no grounds for setting aside the impugned order by invoking the revisional jurisdiction of the Court and the present revision petition stands dismissed.

(SHEKHER DHAWAN)
JUDGE

February 23rd, 2016
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