

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

C.R.No.4818 of 2013 (O&M)

Date of Decision: January 27th, 2016

Smt.Simmi Kohli

...Petitioner

Versus

State of Punjab & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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

Present: Mr.Arun Gosain, Advocate,
for the petitioner.

None for the respondents.

AMIT RAWAL, J. (Oral)

Civil Misc.No.16943-CII of 2013

For the reasons mentioned in the application, which is supported by an affidavit, delay of 13 days in filing the petition is condoned.

CM stands disposed of.

Civil Revision No.4818 of 2013

The petitioner-decree holder is aggrieved of the order dated 23.3.2013, whereby the execution application filed under Order 21 Rule 32 read with Section 151 of the Civil Procedure Code seeking execution of the judgment and decree dated 21.10.2008, has been dismissed on two grounds, firstly, that the original plaintiff has not come forward for seeking the execution as it has been filed on behalf of attorney Naresh Chander and, secondly, no proof of acknowledgment of the letter purported to have been sent by the decree-holder to the Improvement Trust has been placed on record and, thus, the letter and spirit of the decree,

sought to be executed, have not been complied with.

Mr.Arun Gosain, learned counsel appearing on behalf of the petitioner-decree holder submits that the power of attorney in favour of Naresh Chander executed by Simmi Kihli is a registered document. It carries a presumption under Section 85 of the Indian Evidence Act despite having taken the objection with regard to the genuinity/authenticity of the power of attorney, no evidence to rebut the same has been led. The postal receipts, Ex.P3 and Ex.P4, with regard to the letter, have been placed on record, but the Executing Court has non-suited the same on the ground of having not placed on record the acknowledgment.

Notice of this revision petition had been issued long time back and Mr.N.K.Banka, Advocate had put in appearance on behalf of respondent No.2. There was no representation on his behalf on 7.9.2015 and even today also. Accordingly, I proceed to decide the revision petition on merits.

I have heard the learned counsel for the petitioner-decree holder and appraised the paper book.

It would be apt to reproduce the operative part of the judgment which also formed part of the decree. The same reads thus:-

“18. In view of my findings on issue No.1 and 2, the suit of the plaintiff stands decreed ex-parte with costs of the suit to the effect that the letter dated 21.02.2002 as detailed in the head note of the plaint is void, invalid and against the natural justice. However, it is made clear that the defendant is at liberty to recover the amount from the plaintiff after adopting due procedure and after giving notice to the plaintiff and after hearing the plaintiff. Accordingly, this issue is decided in favour of the plaintiff and against the defendants. And further the defendants are directed to issue the No Objection

Certificate to the plaintiff regarding the Flat No.L-58, Rishi Nagar, Vasant Vihar, Jalandhar as detailed and described in the head note of the plaint. Decree Sheet be prepared and file be consigned to the record room.”

The Executing Court has dismissed the execution on the ground that Naresh Chander has not proved the attorney. The aforementioned finding, in my view, is not correct interpretation of the law as the registered document carries a presumption of truth subject to its rebuttal and the said onus and burden has not been discharged. The ground for dismissal of the execution is that the acknowledgment with regard to Ex.P3 and Ex.P4 has not been placed on record. The aforementioned communication was sent through registered post and the postal receipts have been attached. They carry a presumption under Section 27 of the General Clauses Act. The onus was upon the other side to rebut the same. The plea of non-receipt of the judgment and decree on behalf of the Improvement Trust is not sustainable. The Improvement Trust has failed to lead any evidence vis-a-vis non-receipt of the communication, Ex.P3 and Ex.P4, in essence, has not placed on record the diary register to show that they were not aware of the judgment and decree dated 21.10.2008.

Keeping in view the aforementioned facts, the impugned order is hereby set-aside. The execution application is restored. The Executing Court is directed to decide the execution application in a most pragmatic manner, much less in view of the observations noted herein above.

The revision petition stands allowed.

January 27th, 2016
ramesh

(AMIT RAWAL)
JUDGE