

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.7705 of 2016 (O&M)
Date of decision:16.11.2016

Vijay Ahuja

... Petitioner

Vs.

Pokhar Mal Gupta (since deceased) through LRs & others... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Namit Khurana, Advocate
for the petitioner.

AMIT RAWAL J. (Oral)

Petitioner/defendant No.3/judgment debtor is aggrieved of the impugned order dated 21.09.2016 (Annexure P-4), whereby, the objections to the execution of the judgment and decree dated 28.07.2014, vide which the application seeking leave to contest the suit filed under Order 37 of Code of Civil Procedure (hereinafter referred to as "CPC"), have been dismissed and consequentially, the suit has been decreed.

Mr. Namit Khurana, learned counsel for petitioner/defendant No.3/judgment debtor submits that the procedure prescribed under Order 37 Rule 3 sub-rule 4 CPC has not been complied with and in this background of the matter, the aforementioned objections, were filed but the trial Court has erroneously dismissed the same. No doubt, there is no challenge to the judgment and decree dated 28.07.2014 (Annexure P-2), but this aspect can always be looked into by the Executing Court. Defendants No.1 and 2 were

proceeded against ex-parte and leave to defend was moved at the behest of defendant No.3/petitioner. The decree does not envisage the liability to be discharged jointly and severally. On instructions from his client, Mr. Khurana submits that he is willing to pay the proportionate share.

I have heard learned counsel for the petitioner/defendant No.3/judgment debtor and appraised the paper book and of the view that the order declining the objection petition is perfectly legal and justified as the Executing Court cannot go behind the decree which has attained finality, in view of the fact that there is no challenge to the same. However, in case decree do not envisage the recovery of amount from the defendants in the manner and mode as submitted by Mr. Khurana, i.e., jointly and severally, it will be seen at an appropriate stage. In fact, it is simpliciter decree along with simple interest @ 10% per annum.

The petitioner, if so advised shall be at liberty to move an appropriate application before the Executing Court for discharging his liability but not in the manner and mode as indicated above.

With the aforementioned observations, the impugned order is upheld and the revision petition stands dismissed.

(AMIT RAWAL)
JUDGE

November 16, 2016
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Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No