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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-8876-2015

Date of Decision : May 16th, 2016

Uttam Chand [deceased] through L.R.

.... Petitioner

Versus

Yashpal and others

.... Respondents

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. Ravinder Malik, Advocate,
for the petitioner.

SHEKHER DHAWAN, J.

Present revision petition under Article 227 of the Constitution of India for setting aside order dated 25.09.2015 [Annexure P/11] passed by Civil Judge [Junior Division], Karnal.

The suit filed by Uttam Chand [since deceased], father of the petitioner for possession by way of pre-emption was allowed vide judgment and decree dated 30.07.1983 by the Court of first instance on payment of Rs.6849.50 ps. and in view of the directions of the Court below dated 20.1.1982, Rs.1,200/- being 1/5th of pre-emption money was deposited by the plaintiff and the balance amount of Rs.5,649.50 was to be deposited

on or before 17.09.1983 failing which suit was ordered to be dismissed. Respondents challenged the said judgment and decree dated 30.7.1983 and the same were upheld upto Hon`ble Supreme Court. However, till the finalization of the case, amount of Rs.5,649.50 was not accepted by the respondents.

Learned counsel for the petitioner submitted that learned Executing Court has completely ignored the fact that the respondents had not raised this issue of non-payment of balance amount at any stage of the proceedings upto Hon`ble Supreme Court and now, they cannot be permitted to raise such an objection for the first time and presumption is against them that payment has been received by them. So, the present petition be accepted and the impugned order dated 25.09.2015 [Annexure P/11] be set-aside.

Having considered the submissions made by learned counsel for the petitioner and appraisal of the record, this Court is of the considered view that the Court below has taken the correct view that as per judgment and decree dated 30.7.1983, payment of Rs.5,649.50 was to be made till 17.09.1983 and there was no order of the Court thereby extending the period of limitation for depositing the said amount. The Court below has also taken the case from different angle that even taking from the decision of SLP, which was dismissed by Hon`ble Supreme Court vide judgment dated 14.8.2001, the period could be extended only upto 14.08.2001 whereas the petitioner had moved the application after 14 years and time cannot be extended for that purpose. Taking all these factors into consideration, the request of the petitioner was rightly declined by the Court below vide impugned order, Annexure P/11.

In view of the above, there are no grounds for setting aside the
impugned order and the present revision petition stands dismissed.

(SHEKHER DHAWAN)
JUDGE

May 16th, 2016
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