

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

CR No.890 of 2015(O&M)

Date of decision:9.5.2016

Dharambir and another

....Petitioners

VERSUS

Islamuddin

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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

Present: Mr. Amit Jain, Advocate for the petitioners.

Mr. Vivek Goyal, Advocate for the respondent.

REKHA MITTAL, J.

By invoking Article 227 of the Constitution of India, the present petition lays challenge to order dated 02.12.2014 passed by the Civil Judge (Senior Division), Gurgaon, dismissing review petition (Annexure P-14) against order dated 22.04.2013 (Annexure P-13) passed in Execution Petition No.4.

Counsel for the petitioners would contend that the respondent filed a suit for possession by way of specific performance of agreement to sell and also claimed alternative relief of recovery of Rs.16,20,000/-. During pendency of the suit, the petitioners and respondent entered into compromise (Ex.C-1) dated 14.10.2004. In view of the compromise, counsel for the respondent/plaintiff made a statement and on the basis

thereof, the suit was dismissed as withdrawn. On 08.12.2004, respondent/plaintiff filed an application dated 07.12.2004 for restoration of suit on the premise that the petitioners refused to execute and register the sale deed as per terms and conditions of agreement to sell; compromise (Ex.C-1) and submissions made before the Court. The said application was duly replied by the petitioners and thereafter counsel for the respondent made a statement not to press the application for restoration of the suit and accordingly the application was dismissed as not pressed vide order dated 24.08.2006 (Annexure P-7). It is further argued that on the same day i.e. 24.08.2006, the respondent filed an execution petition praying that in view of compromise (Ex.C-1) and the submissions made by the parties, a local commissioner may be appointed to get the sale deed registered on payment of balance sale consideration. The petitioners filed objections dated 22.01.2007 (Annexure P-9) on the ground that execution petition is not maintainable since suit of respondent/plaintiff was dismissed as withdrawn and there is no judgment and decree which can be executed through process of the Court. The executing Court vide order dated 22.04.2013 (Annexure P-13) without any application filed by the respondent/plaintiff passed order dated 22.04.2013 whereby suit titled Islamuddin vs. Dharambir Singh and another is ordered to be restored to its original stage. The petitioners filed an application for review of order dated 22.04.2013 and the same has been dismissed by the trial Court vide order impugned.

It has been further argued that jurisdiction of the trial Court and that of the executing Court is entirely different. The executing Court

has no power to order restoration of a suit that was earlier dismissed as withdrawn more particularly in the circumstances that even the application filed by the respondent for restoration of the suit was ordered to be dismissed as not pressed. It is urged that as the Court committed an error apparent on the face of record, the impugned order dismissing the application for review of order dated 22.04.2013 cannot be allowed to sustain and liable to be set aside.

Counsel for the respondent, on the other hand, would submit that the petitioners have not challenged order dated 22.04.2013 and have filed the petition to assail the order whereby the Court has refused to review the order dated 22.04.2013. It is further submitted that as the respondent was advised to file an application for execution, he under a bona fide belief withdrew his application for restoration of the suit and a serious prejudice is likely to be caused to the respondent in case the petition is allowed and the order dated 22.04.2013 in regard to restoration of the suit is set aside.

I have heard counsel for the parties, perused the paper-book and the various Annexures placed on record.

Be that as it may, it is an undisputed position of the case that the application filed by the respondent/plaintiff for restoration of the suit that was earlier dismissed as withdrawn was also dismissed being not pressed. The respondent, for the reasons best known, may be, under some wrong legal advice filed an application for execution without there being any judgment and decree passed in his favour by a competent Court. In the pending execution petition, the respondent did not file an application

praying for restoration of the suit dismissed as withdrawn or for restoration of the application for restoration of the suit which was dismissed as not pressed. Counsel for the respondent has not disputed that the executing Court has got no jurisdiction to order restoration of a suit that has either been dismissed as withdrawn or dismissed in default. As the order dated 22.04.2013 passed by the executing Court is beyond its competence and jurisdiction, thus, being patently wrong on the face of it, is liable to be reviewed and set aside. In view of the above, I find merit in contentions of the petitioner that the Court below committed a gross error rather illegality in dismissing the application for review of order dated 22.04.2013.

In view of what has been discussed hereinabove, the petition is allowed. The impugned order dated 02.12.2014 is set aside. As a natural corollary, order dated 22.04.2013 is also set aside. However, the respondent may, if so advised, take recourse to appropriate proceedings, in accordance with law, for restoration of the suit earlier dismissed as withdrawn.

MAY 9, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE