

103.

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

**Review Application No.174-CII of 2015 in
Civil Revision No.4994 of 2015**

Date of decision:29.04.2016

Smt. Tej Kaur (since deceased, through her LR) ... Petitioner

versus

Jita Singh and others Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Devinder Kumar Kaushal, Advocate,
for the applicant/petitioner.

Mr. Jasmail Singh Brar, Advocate,
for the respondents.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (Oral)

1. The application for review is sought by the revision petitioner to contend that in the order passed on 07.08.2015, I have made reference to the fact that the decree holder had no knowledge about the proceedings before the High Court on the conclusion of which sale deed was to be executed but actually they were parties to the appeal and, therefore, when the High Court disposed of the case on 13.05.1992, the decree holder knew about the manner of disposal

of the case and the non-fulfillment of the obligation on the part of the decree holder to pay the balance of sale consideration within a period of 3 months could not have been extended. The counsel would refer to case law on the subject that a term of compromise relating to the time for performance cannot be modified by a court. The attempt was, therefore, to point out to an alleged patent error that when the High Court delivered the judgment on 13.05.1992, the execution petition filed only on 21.11.1992, that is, beyond a period of 6 months could not be taken as within time.

2. The copy of the High Court judgment has been filed before the court which shows that the decree holder was a party to the appeal but the main contest was only between the appellant before the High Court and the present judgment debtors who were respondents 1 to 3. The appeal was disposed of by the High Court on 13.05.1992 only in the presence of the counsel for the appellant and the counsel for the judgment debtors 1 to 3 and I do not find anything from the records which would suggest that the decree holder was represented or that he had knowledge of the decree. I cannot find therefore the fundamental ground taken in the review application as valid.

3. As regards the plea that the court has no power to extend the time set down in the compromise, I will take this to be a well established principle that would not require to be restated. In this

case, however, apart from an assertion that the decree holder knew about the judgment of the High Court on 13.05.1992 itself, I have nothing to draw such an inference, for, admittedly, there was no notice issued by the judgment debtors about the disposal of the case and their willingness to sell the property as per the compromise already entered between the parties. I will not, therefore, find the execution petition filed on 21.11.1992 offering to purchase the property on payment of balance of sale consideration to be belated. I asked the counsel for the respondents as to why the amount was not deposited at the same time and to that he would respond that advisedly the petition was filed with an offer and since the court had not passed the order directing the deposit, it was not done. It is a legal maxim that no act of court can prejudice the party (*actus curiae neminem gravabit*). In this case, after hearing the objections from the judgment debtors, the court passed an order only on 06.02.1995. It is in that order that the Executing Court has directed the deposit of balance of sale consideration of ₹2,60,000/-. The objection taken by the judgment debtors is that even this amount of ₹2,60,000/- was deposited only on 20.02.1995. The amount deposited was ₹2,06,250/- and this was explained by the decree holder as resulting from the fact that one of the judgment debtors, Charan Kaur had executed a sale deed in respect of her share after receiving ₹68,750/- and, therefore, even without minding ₹15,000/- already paid as

advance out of total consideration of ₹2,75,000/-, the decree holder had deposited the balance of amount of ₹2,06,250/-. It constituted according to the decree holder the entire payment and this was also done after hearing the objections of the judgment debtors.

4. The order was passed by the Executing Court explaining the fact of sale by Charan Kaur and receipt of partial consideration and it was, therefore, rejecting an objection taken by the judgment debtors again through the order dated 29.02.1996. When the Executing Court was, therefore, passing an order accepting the deposit and providing for further process in execution to take place, that was the first occasion when the judgment debtors could have objected if the order passed by the Executing Court was wrong. It would appear that there was a civil revision petition filed before this court i.e. Civil Revision No.1679 of 1996 and that was disposed of on 18.09.2012 upholding the direction for the sale deed to be executed in favour of the decree holder. That ought to be taken as finally deciding the rights of parties.

5. Even the plea regarding the term of compromise for payment of ₹15,000/- as compensation for use and occupation was dealt with by the court below making reference to the payments at various dates. I asked the counsel for the respondents to furnish details of payments and I have vouched for myself the correctness by looking into the certified copies of challans issued by the

treasuries for deposits with the following details:-

Financial year	Date of deposit
1989-90	08.06.1990
1990-91	17.06.1991
1991-92	11.06.1992
1992-93	19.07.1993
1993-94	14.06.1994
1994-95	-

For 1994-95, the amount was not deposited but I will not think this should still be seen as a deficit, for, the decree holder had already paid ₹15,000/- as advance on the date when the compromise was made. He had paid ₹68,750/- to Charan Kaur and he had deposited ₹2,06,250/- on 20.02.1995. They aggregate to ₹2,90,000/- which is ₹15,000/- more than ₹2,75,000/- as consideration. I will not, therefore, find any deficit either towards sale consideration or as compensation for use and occupation.

6. The term of compromise as regards the compensation was not made as a condition for execution of the sale deed itself but it only allowed for a judgment debtor to take possession if there was a default. If it ever were to be contended that any part of compensation was not paid, it could still not deny the decree holder a right to obtain a sale deed.

7. The objection taken as regards the failure of the decree holder to comply with the terms is therefore meaningless. The counsel for the petitioner-judgment debtor would want me to refer to

all the judgments of the Supreme Court which he cited before me. In **Deepa Bhargava and another Versus Mahesh Bhargava and others-2009(2) SCC 294**, the court was holding that the Executing Court will execute the decree as it is and it would have no jurisdiction to modify a decree. I have already explained that the time stipulation for execution of the sale deed of 3 months within the conclusion of the date of disposal of High Court case must be understood as the date when the information regarding the disposal was available. I have already observed again that apart from description of the decree holder as in the array of parties, there was nothing to suggest that he was himself a participant in the appeal before the High Court. On the other hand, the representations were for the appellant and respondents 1 to 3 (judgment debtors) alone and only their presence has been recorded in the judgment of the High Court. This judgment therefore has no application.

8. In **Mohd. Akram Ansari Versus Chief Election Officer and others-2008(2) SCC 95**, the court was holding making reference to Sections 152 and 153 CPC that a party who has a grievance about the decree must approach the very same court which passed the decree and urge for points that were pressed but not dealt with. There is a presumption in law that a Judge deals with all the points which have been pressed before him. I cannot fathom the relevance of this judgment, for, neither the order which is impugned,

namely, this court's decision itself nor the order which was the subject of revision failed to record any fact which was stated before it.

9. In **Padma Ben Banushali and another Versus Yogendra Rathore and others-AIR 2006 (SC) 2167**, the court was holding that Section 47 CPC provides that the question relating to the execution, discharge or satisfaction of the decree shall be determined by the Executing Court and that all questions relating to execution, discharge and satisfaction will have to be decided by the very same court. The objection about the decree which is now raised is an objection which was rejected by the Executing Court even as early as in the year 1995 when it was directing the execution of the sale deed. The petitioner would be barred by the principle of *res judicata* by vexing this court through objections which were considered and disposed of in the civil revision i.e. CR No.1679 of 1996 and it cannot be reopened again and this judgment in **Padma Ben Banushali** (supra) also has no relevance to the point at issue before us.

10. In **V.S.Palanichamy Chettiar Firm Versus C. Alagappan-AIR 1999 (SC) 918**, the court was disposing of an application under Section 28 of Specific Relief Act that held that if no explanation given by decree holder as to why he could not deposit the balance amount of consideration as per the decree,

equity demands that discretion be not exercised in favour of the decree holder. The explanation had been dealt with by the Executing Court and disposed of in the year 1995 and made as a challenge in the earlier civil revision petition itself and it does not require to be reopened again.

11. In yet another judgment of the Supreme Court in **Jai Narain Ram Lundia Versus Kidar Nath Khetan and others-AIR 1956(SC) 359**, it has been held that the Executing Court could not go behind the decree and all questions relating to execution would be dealt with by the Executing Court itself. The proposition is well taken but it has no relevance to us for the issue under consideration. The same point was also considered by this court in **Resham Singh and others Versus Manmohan Singh Kent and others-AIR 1985 (Punjab) 193**.

12. The review application is wholly without merit, for, I have already expressed in the impugned order that the civil revision itself was a vexatious attempt. I have also observed that the petitioner had not learnt her lesson of an earlier adventurism in arriving at this court with a frivolous objection in Civil Revision No.1679 of 1996. I believed that the expression used on 07.08.2015 will at least remind her about the conduct and the need to take things as having obtained a quietus. This is not big enough an expression as it would seem, for, the point is raised again

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ad nauseam and argued with vigor that was inappropriate to the situation that this case has brought about. I dismiss the review application and impose costs of ₹25,000/- to be paid to the respondent as a measure of punishment for engaging court and its time by a vexatious process.

13. Review application is dismissed with the above observations.

**(K.KANNAN)
JUDGE**

29.04.2016
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