

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

-.-

CR No.2434 of 2015(O&M)
Date of decision: 02.02.2017

Harbans Lal (deceased) through
LRs Chandar Shashi and Ors.

... Petitioners

Vs.

Kesho Ram (deceased) through
LRs Sona Devi and Ors.

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Paramjit Batta, Advocate for the petitioners.

RAMESHWAR SINGH MALIK, J. (ORAL)

Feeling aggrieved against the impugned order dated 25.03.2014 (Annexure P/1) passed by the learned executing Court, petitioner/decreed-holder, by way of present revision petition under Article 227 of the Constitution of India, has approached this Court, for setting aside the impugned order.

Notice of motion was issued. As per the office report, dated 30.11.2016, service was complete, however, nobody put in appearance on behalf of the respondents either on 14.09.2016 or on 07.04.2016. Similar is the position today. Neither anybody has come present nor any request for pass-over has been made on behalf of respondents.

Heard learned counsel for the petitioners.

Learned counsel for the petitioner(s)/decree-holder places reliance on the decree dated 24.08.1995 (at page 35 of the paper-book) to contend, *inter alia*, that the judgment-debter has not carried out the reconstruction of staircase and reopening of the door at the head of the stairs, in strict

compliance of the decree. It was so contended on behalf of the petitioner(s)/decree-holder before the learned executing court, but the learned executing court failed to notice this material aspect. He further submits that since the decree was not satisfied, learned executing court was duty bound to ensure the effective execution of the decree. He prays for setting aside the impugned order.

Having heard learned counsel for the petitioner(s)/decree-holder, after careful perusal of the record and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that since the decree has not been got executed effectively, as per the mandate contained in the decree dated 24.08.1995, the learned executing court committed a serious error of law, while passing the impugned order. In fact, a bare reading of the impugned order shows that the contention raised on behalf of the decree-holder was not properly examined, considered and appreciated in the correct perspective, before passing the impugned order.

Once the decree had attained finality between the parties, it goes without saying that the said decree was bound to be executed in letter and spirit. It seems that the defendants/judgment-debter were trying to play smart by saying that they have carried out the reconstruction of staircase and reopening of the door at the head of the stairs, as per the directions contained in the decree under execution. However, it was factually incorrect because had the defendants/judgment-debter carried out the work of reconstruction of staircase and reopening of the door at the head of the stairs, strictly in accordance with the directions given by the learned trial court, while passing the decree dated 24.08.1995, there would have been no objection at the hands of decree-holders. Having said that, this court feels

no hesitation to conclude that learned executing court fell in serious error of fact and law, while passing the impugned order and the same cannot be upheld, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the executing court has failed to appreciate the true factual aspect of the matter and also the clear directions issued by the learned court, while passing the decree in favour of the petitioners, the impugned order cannot be sustained and the same is hereby set aside.

Learned executing court is directed to ensure the strict compliance of the decree dated 24.08.1995, by its effective execution, in its true letter and spirit. Learned executing court will do well in getting the construction work got done by the judgment-debtor, checked by a local Commissioner, at the cost of wrongdoer. Let the learned executing court do the needful at an early date, however, strictly in accordance with law.

Resultantly, with the abovesaid observations made and directions issued, instant revision petition stands allowed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

02.02.2017
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Whether speaking/reasoned	-	Yes
Whether reportable	-	No