

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

**C. R. No. 5183 of 2015
Date of Decision:- 07.02.2017**

Sunil Kumar

...Petitioner

vs.

Nand Kishore (since deceased) through LR.

...Respondents.

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Anil Chawla, Advocate,
for the petitioner.

DAYA CHAUDHARY, J.

The present revision petition has been filed under Article 227 of the constitution of India for setting aside impugned order dated 26.8.2013 (Annexure P-1) passed by the Court of Civil Judge, (Junior Division), Amritsar dismissing the execution and order dated 1.4.2015 (Annexure P-2) passed by the Additional District Judge whereby the appeal filed by the petitioner has been dismissed.

Briefly the facts of the case are that the suit filed by the petitioner-plaintiff was decreed vide judgment and decree dated 8.11.1989 passed by the Sub Judge, Ist Class, Amritsar. Against said judgment and decree, an appeal was filed by the respondent-defendants and ex parte stay was granted. Ultimately, the appeal filed by respondent-defendants was dismissed in default. Along with the appeal, an application under Order 41 Rule 5 read with Section 151 CPC was also filed. The execution of

judgment and decree under appeal was stayed ex parte subject to condition of furnishing of security by the appellant in the sum of ₹ 5,000/- to the satisfaction of the trial Court.

Petitioner-decree holder filed execution of the judgment and decree dated 8.11.1989. The objections to the execution were filed by the respondent-judgment debtors stating that the execution had become infructuous as the matter has been settled with the decree-holder on 9.1.1995 and an amount of ₹ 35, 000/- was received by him towards full and final settlement i.e. ₹ 10,000/- as advance and ₹ 25,000/- as damages. Thereafter, the appeal was withdrawn and it was also alleged that the execution has become time barred and cannot be proceeded further. The objections were contested and it was denied that any compromise had taken place or the execution has become infructuous.

The Executing Court framed the issues and ultimately the execution petition was dismissed vide impugned order dated 26.8.2013 by holding the execution to be time barred. Against the said order dated 26.8.2013, the petitioner filed an appeal which was also dismissed vide order dated 1.4.2015.

Learned counsel for the petitioner submits that both the Courts below have failed to appreciate that the judgment and decree was passed in favour of the petitioner vide judgment and decree dated 8.11.1989. In the appeal filed by the respondents, ex parte stay was granted on 21.12.1989 and thereafter, the case was adjourned to 8.1.1990. On that day, operation of decree was suspended and appeal was also dismissed in default on 15.5.1995. The petitioner-plaintiff perverted from execution of the decree

from 21.12.1989 to 15.5.1995 and after excluding the said period, the execution was within time as it was filed within the period of 12 years and as such limitation counted from 15.5.1995 was to expire on 14.5.2007 whereas the execution was filed on 31.5.2003. The appeal was in continuation of the suit and till it was decided finally, the limitation was to run from the date of final decree. Learned counsel submits that all these facts have not been appreciated by both the Courts below while dismissing the execution application.

Notice of motion was issued in the case on 16.2.2016 but in spite of service, neither the respondents appeared in person nor was represented by any counsel and as such they were proceeded ex parte.

Heard arguments of learned counsel for the petitioner and have also perused the impugned order dated 26.8.2013 whereby execution against order dated 1.4.2015 was dismissed. The Executing Court framed the following issues:-

- “1. Whether the JD has made payment of Rs. 35,000/- as full and final amount of settlement vide receipt dated 9.1.1995 to the DH? OPJD.
2. Whether the objection petition is not maintainable in the present form? OPDH.
3. Relief.”

As per alleged compromise, the matter was settled between the parties as an amount of ₹ 35,000/- was received towards full and final settlement, out of which ₹ 10,000/- was towards advance and ₹ 25,000/- towards damages and the appeal was withdrawn.

Two issues were there before the Executing Court. First, whether there was a compromise between the parties or not and for resolving it, the onus was on the decree holder to prove that the execution became infructuous because the matter was settled between the judgment debtor and decree holder. Thereafter, the execution was barred by time and it was held that no settlement had arrived at between the parties as judgment debtor had not received any payment from the decree holder. The second point was whether the execution was time barred or not. As per Article 136 of the Limitation Act, 1963, a decree passed by the Civil Court can be executed within a period of 12 years from the date when the decree becomes enforceable. The civil suit of the plaintiff was decreed vide order dated 8.11.1989 and the appeal was dismissed on 15.5.1995. The Executing Court held that the objections were maintainable because the execution was time barred and the Executing Court dismissed the execution as it was not maintainable being time barred.

As per case of the petitioner, the suit was decreed on 8.11.1989. Ex parte stay was granted in the appeal filed by the respondent-defendants on 21.12.1989. The case was adjourned for 8.1.1990 and on that day, the operation of decree was suspended and thereafter the appeal was dismissed for want of prosecution on 15.5.1995. After excluding the period from 21.12.1989 to 15.5.1989, the execution was found to be within time as the limitation for execution of a decree is 12 years. Period of limitation was to be counted from 15.5.1995. In case that period is considered as such then it was to expire on 14.5.2007 as the execution was filed on 31.5.2003.

Moreover, the appeal was in continuation of the suit and till it was decided

finally, the limitation was to run from the date of final decision. These facts have not been considered while dismissing the execution petition and the period of limitation has not been properly counted by the Executing Court.

Accordingly, there is a force in the contention raised by learned counsel for the petitioner and the revision deserves to be allowed. Therefore, impugned order dated 26.8.2013 (Annexure P-1) is set aside and the case is remanded to the Executing Court to reconsider the same in view of observations as made above and consider the period of limitation in view of provisions of law and thereafter pass necessary order.

February 07, 2017
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes