

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No. 7718 of 2017 (O&M)
Date of Decision: December 16, 2017

Kawaljeet Kaur

...Petitioner

Versus

Kuldeep Singh

...Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Inderjit Singh Chawla, Advocate
for the petitioner.

ANITA CHAUDHRY, J.

This petition is directed against the order dated 22.09.2017
(Annexure P-8).

The backdrop would be necessary. A suit was filed by the plaintiff which was decreed *ex parte* on 15.11.2016. The decree holder filed an execution on 17.12.2016. The Executing Court had noted that no sale consideration was pending and adjourned the case for filing the draft sale deed. The decree holder placed on record the draft sale deed and vide order dated 24.01.2017, the Executing Court had ordered issuance of notice of the draft sale deed to the judgment debtor for 21.04.2017. Meanwhile, it also asked for a report from its Reader regarding the correctness of the same. The judgment debtor appeared and filed its objections on 19.04.2017. The objections filed by the judgment debtor

were dismissed on 10.07.2017. Thereafter, the decree holder moved an application for appointment of a Local Commissioner to get the sale deed registered in his favour but referred to Order 21 Rule 32(5) of the Civil Procedure Code. The Executing Court dismissed the application holding that the list of the property had not been provided and its own staff i.e. the Reader was yet to check the draft sale deed. It also noted that opportunity was to be given to the judgment debtor to file objections. It appears that it failed to notice that notice regarding draft sale deed had already been issued and the judgment debtor had put in appearance and had filed the objections after the case had been adjourned on 24.03.2017. The decree holder had additionally made a prayer under Order 21 Rule 32(5) CPC since the judgment debtor was not cooperating and was not executing the sale deed, therefore, a prayer had been made also for attachment of the property.

I have heard the counsel for the petitioner.

No notice is being issued to the judgment debtor as it would further delay the matter.

It is necessary to reproduce Order 21 Rule 34 of CPC and it reads as under:-

34. Decree for execution of document, or endorsement of negotiable instrument

(1) Where a decree is for the execution of a document or for the endorsement of a negotiable instrument and the judgment-debtor neglects or refuses to obey the decree, the decree-holder may prepare a draft of the document or endorsement in accordance with the terms of the decree and deliver the same to the Court.

(2) The Court shall thereupon cause the draft to be served on the

judgment-debtor together with a notice requiring his objections (if any) to be made within such time as the Court fixes in this behalf.

(3) Where the judgment-debtor objects to the draft, his objections shall be stated in writing within such time, and the Court shall make such order approving or altering the draft, as it thinks fit,

(4) The decree-holder shall deliver to the Court a copy of the draft with such alterations (if any) as the Court may have directed upon the proper stamp-paper if a stamp is required by the law for the time being in force; and the Judge or such officer as may be appointed in this behalf shall execute the document so delivered.

(5) The execution of a document or the endorsement of a negotiable instrument under this rule may be in the following form, namely :-

"C.D. Judge of the Court of

(or as the case may be), for A. B., in a suit by E.F. against A. B.",

and shall have the same effect as the execution of the document or the endorsement of the negotiable instrument by the party ordered to execute or endorse the same.

(6) (a) Where the registration of the document is required under any law for the time being in force, the Court, or such officer of the Court as may be authorised in this behalf by the Court, shall cause the document to be registered in accordance with such law.

(b) Where the registration of the document is not so required, but the decree-holder desires it to be registered, the Court may make such order as it thinks fit.

(c) Where the Court makes any order for the registration of any document, it may make such order as it thinks fit as to the expenses of registration.]

A perusal of the above would show that the draft sale deed has already been filed by the decree holder and notice regarding the draft sale deed had been issued and the Executing Court was to take a step forward and instead of doing that and asking its Reader to report it deviated from the steps referred to in Order 21 Rule 34(3) CPC. The decree holder had also filed an application under Order 21 Rule 32(5) of

CPC but the Court could simultaneously deal with both the issues and should not have dismissed the application.

The petition is allowed and the order dated 22.09.2017 (Annexure P-8) is set aside. Executing Court is directed to adhere to the provisions contained in Order 21 Rule 34 CPC and pass appropriate orders on the application.

December 16, 2017

sunil

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No