

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

**Civil Revision No.8488 of 2015
Date of Decision: 04.10.2017**

**Prem Chand and another Petitioners
Vs
Swaran Singh Respondent**

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sandeep K. Sharma, Advocate
for the petitioners.

Mr. Pankaj Bali, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. In this revision petition, the petitioners have assailed the order dated 04.11.2015 passed by the Civil Judge (Jr. Divn.) Khanna vide which application filed by the petitioners/judgment-debtors under Article 135/136 of the Limitation Act (hereinafter to be referred as 'the Act') for dismissal of the execution application being time barred was dismissed.

[2]. Brief fact are that respondent filed a civil suit for mandatory injunction against the petitioners vide civil suit No.303 of 18.04.1995 titled '*Swaran Singh vs. Prem Chand and another*'. The said suit was decreed vide judgment and decree dated 06.09.2001 by the Civil Judge (Jr. Divn.) Khanna. The

defendants were directed to hand over the vacant possession of the suit property as detailed in the headnote of the plaint within a period of two months, failing which the plaintiff was held entitled to recover the possession in accordance with law. The suit was decreed for recovery of Rs.800/- per month instead of Rs.3,000/- per month towards use and occupation of the suit land for the period from 15.11.1992 to 31.03.1995. The said judgment and decree was affirmed in appeal by the Addl. District Judge, Ludhiana vide judgment and decree dated 16.04.2003. Regular Second Appeal No.3547 of 2003 filed by the petitioners against the judgments and decrees of the Courts below was also dismissed by the High Court vide judgment dated 14.09.2014.

[3]. The respondent-decree holder filed Execution No.87 dated 22.11.2003. In the said execution, 3rd party objections were filed by one Jagan Nath son of B. Siri Ram. The said objections were dismissed by the executing Court vide order dated 05.07.2014. During pendency of the execution petition on 28.10.2014, learned counsel for the decree-holder made a statement before the executing Court that the present execution being old in nature be allowed to be withdrawn with proceedings intact at the stage where the same is being withdrawn. One Sh. M.M. Rattan, Advocate for the judgment-debtor/objectors also

suffered the statement of no objection to the aforesaid withdrawal. Following order was passed by the executing Court i.e. Civil Judge (Jr. Division) Khanna:-

“Sh. A.K. Arora, Adv. for the D.H. has suffered statement to the effect that present execution is old in nature and in order to avoid any haste in the proceedings he want to withdraw the same with proceeding intact, at the stage where he is withdrawing the execution and Sh. M.M. Rattan, Advocate, Counsel for the J.D./objector suffered statement to the fact that he has no objection if the execution is withdrawn at the present stage, with the proceeding intact at the stage where the same has been withdrawing.

In view of the statement, execution is dismissed as withdrawn, with the proceedings intact to file fresh execution. File be consigned to the record room.”

[4]. Thereafter fresh execution was filed on 31.10.2014 i.e. after three days of aforesaid withdrawal order dated 28.10.2014. In this execution, the judgment-debtors/petitioners filed the objection with regard to limitation. Evidently, the judgment-debtors Prem Chand and Pritpal Singh did not appear in the previous execution and according to them the order dated 28.10.2014 was not binding upon them. Since the execution was filed within two years of date of decree, therefore, under Order 21 Rule 22 CPC, notice of such execution to the judgment-debtors was exempted by the executing Court.

[5]. Learned counsel for the petitioners submitted that since the judgment-debtors did not appear in the previous execution and they had no notice of any pending execution, therefore, the filing of fresh execution was barred by limitation. The preliminary argument of learned counsel was that in the absence of any specific stay granted by the Appellate Court, no such stay regarding execution of decree in terms of Order 41 Rule 5 CPC could be presumed so as to maintain the execution at the stage which has already become barred by limitation.

[6]. Learned counsel further contended that the presence of Sh. M.M. Rattan, Advocate for the judgment-debtors in the order dated 28.10.2014 was factually wrong inasmuch as that Sh. M.M. Rattan was counsel for the objectors. Learned counsel by relying upon **M/s B.S. Industries Darapur vs. State Bank of Patiala, Hoshiarpur (P&H) 2014(1) PLR 373; Imperial Hotel and Restaurant Pvt. Ltd., vs. Karnail Singh (P&H) 2014(4) Law Herald 3184** and **State Bank of India vs. M/s Day Old Farm, (P&H) 2005(1) R.C.R. (Civil) 392** contended that for the purpose of enforcement of the decree, the time fixed for the performance of the same under the Limitation Act has to be adhered to. Since the earlier execution was dismissed as withdrawn, the filing of second execution would not extend the period of limitation under Article 136 of the Act.

[7]. I have considered the submission made by learned counsel for the parties.

[8]. The objections filed by one Jagan Nath were dismissed vide order dated 05.07.2014 by the Civil Judge (Jr. Divn.) Khanna. The judgment-debtors have lost the main litigation upto the High Court. The first execution filed before the executing Court was allowed to be withdrawn on 28.10.2014 with the proceedings intact to file fresh execution. Thereafter second execution was filed within three days i.e. on 31.10.2014. The rights and liabilities of the parties were made to continue in the second execution petition. Since the first execution was filed within two years of decree, therefore, service of notice of such execution was exempted by the executing court in terms of Order 21 Rule 22 CPC. By filing the second execution proceedings were ordered to be kept intact vide order dated 28.10.2014.

[9]. The present case is distinguishable from the aforecited cases in view of the fact that permission was granted to the decree-holder to withdraw the earlier execution with a liberty to file fresh and the proceedings were kept intact for filing fresh execution. In view of above, more particularly in view of the fact that in the earlier execution, there was an exemption *qua* notice to the judgment-debtors in terms of Order 21 Rule 22 CPC,

therefore the present case is not hit by any such bar of limitation. It was not a case of partial satisfaction of the decree in the earlier execution, nor was a simpliciter case of withdrawal of execution with a permission to file fresh execution, but it was a case of keeping the proceedings intact to file the present second execution. A distinction has to be drawn in view of the peculiar facts and circumstances of the case that even if, the execution was allowed to be withdrawn, the law of limitation was not affected by the first execution. Since the proceedings were kept intact for the purpose of filing the second execution, therefore, continuation of earlier execution was not to be affected by any limitation as projected by the petitioners/judgment-debtors.

[10]. Once the fresh execution was allowed to be filed with proceedings of the earlier execution intact, the exemption as granted under Order 21 Rule 22 CPC in the earlier execution would again come into being so as to keep the notice *qua* judgment-debtors exempted on the same terms and conditions. The permission granted by the Court for keeping the proceedings intact for filing the fresh execution is the differentia which makes the present case to be distinct from other cases in which fresh execution can be held to be barred as law of limitation is not affected by the first execution.

[11]. Normally in case of fresh institution of proceedings on the basis of permission granted by the Court for fresh filing on the same cause of action, the plaintiff is bound by the law of limitation in the same manner as if, the first proceedings had not been instituted, but in the instant case, the *differentia* is only the permission to keep the proceedings intact to file the fresh execution which makes the present case distinct so as to bring out the same from application of Order 23 Rule 2 CPC as well as rigor of Article 135/136 of the Act. On the basis of facts and circumstances of the case, the judgment-debtors cannot be allowed to preclude the decree-holder from the fruits of the decree for which they have been contesting the litigation since 1995.

[12]. In view of above, I am of the view that the order passed by the executing Court is not suffered from any error of jurisdiction or perversity of any kind. This revision petition is accordingly dismissed.

October 04, 2017

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No