

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

**CR No.3743 of 2018 (O&M)
Date of Decision : 15.10.2018**

Risal Singh

....Petitioner

VERSUS

Jai Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Manoj Kumar Taya, Advocate for the petitioner.

Mr. Surya Paratap Singh, Advocate for the respondents.

B.S. WALIA, JUDGE (ORAL)

1. Challenge in the revision petition is to order dated 11.4.2018 (Annexure P-9) whereby the learned Executing Court allowed the second objections moved by the respondents/judgment-debtors and ordered the staying of executing proceedings.

2. Learned counsel for the petitioner contends that the petitioner filed execution application in respect of judgment and decree dated 21.12.2016 against the respondents-JDs who filed detailed objections to the execution application on 15.12.2017 (Annexure P-3). The first objection filed by the respondent-JDs was dismissed vide order dated 19.1.2018 (Annexure P-5) in which it was noticed that the only objection pleaded by the JDs was that an appeal against the order passed by the learned Additional District Judge, Karnal was pending adjudication before this Court. The Executing Court by observing that mere pendency of an appeal

was not a ground to adjourn the case or to stall the proceedings particularly when there was no stay order by this Court dismissed the objection as devoid of merit. Thereafter, the respondent-JDs filed a second set of objections on 30.1.2018 (Annexure P-6) mentioning therein that although respondent-JDs had filed RSA No.2442 of 2017 before this Court against Civil Appeal No.188/2013 passed by the Court of Sh. Narinder Pal, learned Additional District Judge, Karnal in case titled as Risal Singh versus Jai Singh etc but RSA No.4009 of 2014 titled as Raghbir Singh and others versus Jai Singh and others was pending adjudication in which vide order dated 16.1.2015 parties had been directed to maintain status quo regarding the disputed property and the same was the subject matter of the execution proceedings fixed for 20.7.2018 and in view thereof, the execution proceedings be adjourned to await the outcome of RSA No.2442 of 2017 or until stay was vacated in RSA No.4009 of 2014.

3. Learned counsel for the petitioner has relied upon decision of Hon'ble the Supreme Court in **Barkat Ali & anr. Versus Badri Narain (D) by LRs 2008(3)SCC 615** to contend that general principles of res judicata would be applicable even at the subsequent stage of the same proceedings and the same Court would be precluded from going into that question again which has been decided or deemed to have been decided by it at an early stage. Relevant extract of the aforesaid decision is reproduced as under:

"8. The principles of res judicata not only apply in respect of separate proceedings but the general principles also apply at the subsequent stage of the same proceedings also and the same Court is precluded to go into that question again which has been decided or deemed to have been decided by it at an early stage."

4. Learned counsel has also referred to the decision of Hon'ble **Jharkhand High Court in Deepak Kumar Sinha versus Binay Kumar Sinha 2011 AIR CC 3196** to contend that objection which was not raised by the JDs in the earlier objection petition despite availability of such objection would be barred from filing a second set of objections on the principles of constructive res judicata. To similar effect is the decision of this Court in **Dharam Paul Jain versus M/s. Vijay Kumar Manohar Lal and others 1989 (1) Land L.R.667** wherein it was held that if an objection could have been taken by the objector in the previous petition but was not taken by him he could not be allowed to take the same in a subsequent objection petition.

5. Per contra, learned counsel for the respondents contended that the respondents had merely produced copy of order of this Court and had not filed second set of objections.

6. I have considered the submissions of learned counsel for the parties and am of the view that the plea on behalf of the respondents is without any merit as a perusal of the application filed by them on 30.1.2018 categorically mentions the same to be objections in execution petition whereas earlier also objections had been filed vide application dated 15.12.2017 (Annexure P-3). Admittedly, the objections as was taken up in application filed on 30.1.2018 (Annexure P-6) was not taken up in the first objection petition filed on 15.12.2017 (Annexure P-3).

7. In view of the decisions as have been referred to above, it is clear that in case an objection was available to a judgment-debtor but was not filed, the same would preclude the JD from filing a subsequent objection petition to take up the same as an objection and the subsequent application would be hit by the general principles of res judicata.

8. Accordingly, in the light of the position as noted above, the revision petition is allowed and the impugned order is set aside.

October 15, 2018
ps

(B.S. WALIA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No