

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

CR No.8872 of 2015 (O&M)

Date of decision: 7th February, 2018

Rajesh Arora through LRs

... Petitioners

Versus

Dalip Kumar

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Arjun Atri, Advocate for the petitioners.

Mr. Gurinder Pal Singh, Advocate for the respondent.

FATEH DEEP SINGH, J.

This civil revision has arisen for setting aside orders dated 01.12.2015 (Annexure P12) whereby the learned Civil Judge (Senior Division), Gurgaon had issued warrants of possession in respect of house detailed in the head note of the revision petition.

Upon hearing Mr. Arjun Atri, Advocate for the petitioners; Mr. Gurinder Pal Singh, Advocate representing the respondent and on perusal of the records.

During the course of hearing, this Court is alarmed as well as shocked to come across the manner in which some of our subordinate courts, be it innocently/bonafidely or be it for a motivated cause, throw all the cannons which form an integral part of the process of administration of justice, off to the winds and which not only results in

deep anguish but irreparable trauma upon a litigant and to assuage to some extent the same, this finding has come about.

It is admitted by both the sides that the then plaintiff Dalip Kumar (now respondent) and defendant Rajesh Arora (since deceased and now represented by his LRs as petitioners) were daggers drawn and had been litigating for quite a long period of time, filing suit for permanent injunction, eviction application under the Rent Act etc. including the present suit for specific performance. As a sequel to it a Civil Suit titled as 'Rajesh Arora v. Dalip Kumar' bearing CS No.178 dated 17.04.2008 by way of suit for specific performance was filed which was pending before the Court of learned Civil Judge (Junior Division), Gurgaon. It is during the course of proceedings, as is there from orders dated 01.06.2005, the parties effected a compromise Ex.C1 leading to dismissal of the suit as withdrawn. The said order is reproduced as below to lay emphasis:

“Present: Plaintiff in person with counsel.

Defendant in person with counsel.

Smt. Bhagwanti Sethi appeared on behalf of defendant. Statement of plaintiff along with counsel recorded separately in which he has stated that he has compromised the matter with the defendant. Compromise Ex.C1 also placed on file and therefore, he does not want to proceed with the present suit and same be dismissed as withdrawn. Statement of defendant to this effect also recorded separately.

Heard. In view of statement and compromise Ex.C1, filed by plaintiff, present suit is hereby dismissed as withdrawn. File be consigned to record room after due compliance.

*Sd/- Civil Judge (Jr. Divn.)
Gurgaon. 01.06.2005.”*

As is contended by learned counsel for the petitioner Mr.Arjun Atri and is duly acceded to by Mr. Gurinder Pal Singh learned counsel representing the respondent that since then this order of dismissal of the suit as being withdrawn has attained finality. It is subsequent thereto an execution petition bearing No.73/2005 (Annexure P6) was preferred. As is submitted before this Court by the two sides, no judgment or decree was passed on the basis of this compromise and the suit was dismissed as withdrawn.

Section 2 Clause (2) of the CPC defines ‘decree’ to be a final adjudication between the parties and where a suit is completely disposed off, a final decree comes in to being. ‘Judgment’ as defined under Section 2(9) CPC means the statement given by the Judge on the grounds of a decree or order. Order XXI CPC deals with ‘execution of decrees and orders’ and under Clause (1) it provides for modes of paying money under decree and connotes that the same could be accomplished by deposit in the Court whose duty is to execute the decree. As is there and is as such well highlighted that objections were filed by the objectors to the execution application which was dismissed by the impugned orders

dated 01.12.2005 whereby specific plea that no judgment or decree was ever passed in the case and the suit was dismissed as withdrawn and which the learned executing Court claims is not disputed and it is there the Court has fell into an error that a person can seek execution of a compromise. Had it been so, as is there the other party had backed out of the compromise Ex.C1, the appropriate remedy for the party was to have gone in for taking recourse to Civil Court by filing appropriate suit for enforcement of the compromise Ex.C1. When Order XXI Rule 10 CPC provides for application for execution holding out that where the holder of a decree desires to execute it, he shall apply to the Court which passed the decree and it might be an oral application or a written one.

Since in the instant case, as is obvious, neither any judgment nor any decree on the basis of this compromise or otherwise was ever passed by the Court including by any Lok Adalat, how could it execute a compromise, is anybody's guess. The Court below has certainly fell into a grave error resulting in gross miscarriage of justice necessitating intervention by this Court whereby the impugned order dated 01.12.2015 (Annexure P12), whereby warrants of possession have been issued, is hereby set aside. The instant revision is allowed in those terms. However, the respondent may adopt appropriate recourse to legal procedure for enforcement of the compromise, if so advised. Keeping in view that such an order has been passed by an officer of sufficiently long standing, impels this Court to direct that the matter be placed before the learned

Administrative Judge of the district where the officer is presently posted,

for appropriate action.

(FATEH DEEP SINGH)
JUDGE

February 7, 2018
rps

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