

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

**Civil Revision No.6819 of 2018 (O&M)
Date of Decision: 12.07.2019**

Amarjit Singh

.....Petitioner

Vs

Iqbal Kaur

....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. G.S. Bedi, Advocate
for the petitioner.

Mr. SPS Baaghi, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this revision petition against the order dated 28.09.2018 passed by the Addl. Civil Judge (Sr. Divn.) Ludhiana vide which the objections filed by the petitioner before the executing Court were dismissed.

[2]. Petitioner (judgment debtor) and the respondent (decree holder) are related to each other. Respondent is sister-in-law of the petitioner and was married to the brother of petitioner. Respondent filed a suit for possession and permanent injunction claiming herself to be owner of Shop No.6

measuring 44 sq. yards situated at village Gill-II Dugri Road comprised in *Khasra* No.57/3, 58/3 *Khata* No.2105/2901, Tehsil and District Ludhiana on the basis of sale deed dated 20.11.1990 executed by its previous owner namely Saudagar Singh. The property was duly mutated in the name of the present respondent. Petitioner/defendant was asked to look after the property. It was alleged that petitioner got installed electricity connection without the consent of the plaintiff/respondent. When the plaintiff/respondent intended to sell the shop, defendant/petitioner put himself in possession by opening the locks of the plaintiffs. Plaintiff/respondent was living in Delhi and her husband was not keeping well. Allegations of mischief were made against the defendant/petitioner.

[3]. The suit was decreed by the Addl. Civil Judge (Sr. Divn.) Ludhiana vide judgment and decree dated 23.02.2016. An appeal was preferred by the defendant/petitioner and the same was dismissed by the lower Appellate Court vide judgment and decree dated 28.03.2017. No further appeal was filed by the defendant/petitioner and the judgment and decree passed by the Courts below had attained finality. Petitioner also filed a suit for partition and possession of the Flat No.561, Nimri Colony, Ashok Vihar, Phase IV, Delhi claiming 1/4th share in the property.

[4]. Respondent filed execution for taking possession of Shop No.6. Executing Court passed an order dated 07.03.2018 and issued warrants of possession in favour of the respondent for 18.05.2018. It was so recorded by the executing Court that no objections were filed by the judgment debtor despite the date being the last opportunity. In view of judgment and decree dated 23.02.2016 the warrants of possession of the property in question were issued for 18.05.2018. Thereafter, according to the petitioner, a compromise was effected between the parties, whereby it was agreed that the decree holder shall transfer her ownership in the property in question in favour of the judgment debtor/petitioner and the judgment debtor/petitioner shall transfer his share in the property bearing Flat No.561, Nimri Colony, Ashok Vihar, Phase IV, Delhi in favour of the respondent-plaintiff. It was further agreed that since the value of the shop is on the higher side, therefore, the petitioner shall pay an amount of Rs.11.50 lakhs for transfer of shop in dispute. Out of the aforesaid amount, Rs.50,000/- was paid in cash and the remaining amount was to be paid through cheque/transfer in the bank account. It was agreed between the parties that both the parties shall withdrew their respective cases. Petitioner further alleged that the petitioner has already withdrawn the case from the Court at Delhi, but respondent did not comply with

the terms of compromise.

[5]. Learned counsel for the petitioner by referring to **Sultana Begum vs. Prem Chand Jain, 1997(2) R.C.R. (Civil) 8** and **Lakshmi Narayanan vs. S.S. Pandian, 2000(2) R.C.R. (Rent) 334** contended that in subsequent event in getting the issue compromised and withdrawal of the case by the petitioner in the Court at Delhi would advance the validity of the compromise and the execution ought to have been partially satisfied. The objections filed by the petitioner should have been decided by the executing Court by adopting proper procedure and the executing Court should not have given effect to the consequence arising out of the decree.

[6]. The aforesaid compromise dated 09.05.2018 has been denied by the decree holder. Learned counsel for the respondent by referring to the signatures of the respondent appearing on each page of the compromise stated that the signatures are apparently lifted signatures and the compromise was forged. An application was filed by the decree holder for breaking open the locks for effecting warrants of possession as ordered by the executing Court. The application was allowed by the executing Court on 18.05.2018 for executing warrants of possession and directions were issued to break open the locks. Thereafter objections were filed by the petitioner before the

executing Court. The objections were contested by the respondent on the ground that the compromise was forged and fabricated. No such compromise was agreed, nor the respondent put any signatures over the said compromise. Receiving of any cheque for amount of Rs.1 lakh and further agreeing again to receive Rs.1 lakhs within 30 days were specifically denied by the respondent.

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

[8]. In view of requirement of Order 21 Rule 2 CPC, a provision can only be applied in case the incriminating facts in paying and receiving the amount in question are certified by the Court under Order 22 Rule 2 CPC. In the event of no certification, the provision cannot be relied. No such satisfaction has been recorded by the executing Court, therefore, the executing Court was not prohibited from giving effect to the decree in question. Ratio of **Sultana Begum's case** (supra) does not apply to the facts of the present case. Similarly on the aforesaid parameters, **Lakshmi Narayanan's case** (supra) has also no adverse effect in the execution filed by the decree holder/respondent.

[9]. It is a settled principle of law that the executing Court

cannot travel beyond the decree, nor sit in appeal over the same. Decree of the court being sacrosanct in nature, execution thereof ought not to be thwarted on mere asking of the judgment debtor and on wholly untenable grounds having no bearing on the validity and executability of the decree. Purview of scrutiny under Section 47 CPC is very limited to the objections to its executability of the decree on the ground of jurisdictional infirmity or voidness. Only a decree which is a nullity can be subject matter of objection under Section 47 CPC. The decree which is even erroneous either in law or on facts cannot be made subject matter of objections under Section 47 CPC. The erroneous decree cannot be equated with a decree which is a nullity. The executing Court cannot hold any factual inquiry which may have the effect of nullifying the decree. The scope of Section 47 CPC is only to allow the executing Court to have limited inquiry regarding jurisdictional issues which goes to the root of decree and has effect of nullifying the decree i.e. rendering the decree to be nullity. The law propounded on the aforesaid issue by the Hon'ble Apex Court in **Brakewell Automotive Components (India) Pvt. Ltd. vs. P.R. Selvam Alagappan, (2017) 2 R.C.R. (Civil) 1047** and **Punjab State Civil Supplies Corporation Ltd. vs. Atwal Rice and General Mills Rep. By its Partners, (2018) 1 R.C.R. (Civil) 944** can be

relied.

[10]. The alleged compromise is only after passing of order dated 07.03.2018. The factum of compromise of the alleged payment made thereunder have not been certified in terms of Order 21 Rule 2 CPC, therefore, the executing Court cannot be prohibited from giving effect to the decree in question. The execution of the compromise and payment received therein have been specifically denied by the respondent. It is a settled principle of law that all objections are not necessarily to be decided by way of following proper procedure. Frivolous objections can be dismissed summarily.

[11]. For the reasons recorded hereinabove, I find no error of jurisdiction in the impugned order passed by the executing Court. Consequently, the present revision petition is found to be totally devoid of merits and is dismissed as such.

July 12, 2019

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No