

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

Sr. No.230

**CR No.7644 of 2015 (O&M)
Date of decision: 22.08.2019**

Subhash Rani Bhalla @ Subhash Bhalla

....Petitioner

versus

Himmti Bai and others

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Atul Gaur, Advocate for
Mr. Sumeet Goel, Advocate
for the petitioner.

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DEEPAK SIBAL, J. (Oral)

The present petition is directed against the order dated 18.08.2015 passed by the Additional Civil Judge (Senior Division), Kaithal (for short – the Executing Court) dismissing the execution petition filed by the petitioner through which she had sought execution of decree dated 02.03.1983.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that in the year 1983, the late husband of the petitioner namely Suresh Kumar, alongwith one Kanta Devi, instituted a suit through which they sought the issuance of a direction to respondent No.1, as also her husband-Piare Lal, to remove the construction raised by them as such construction was restricting the flow of light and air to the plaintiffs' property. In such suit, the parties entered into a compromise

on the basis of which decree dated 02.03.1983 was passed. The same is reads as under:-

“In the present case the parties have entered into following compromise. (1) That the room in question of defendant which is Mark A in the Site Plan, the portion thereof which falls in front of defendant No.1's window, the height thereof together with roof and parapets towards east-north corner of the room shall be 8'-1” Eight Feet and One Inch from the parapet of floor below. Defendants shall have no right for more height than this towards portion of room which falls in front of window. (2) That the windows and Parnala of defendant No.1 opens towards the house of defendants, the defendants shall not create any hindrance qua air and light for the same. In the same manner Plaintiff No.2 has two windows one Hole, one Roshandan, one Parnala of waste water in eastern wall of plaintiffs. No hindrance qua air, light and water for the same shall be created. The Plaintiff No.2 shall fix pipe in his parnala within one month which shall be maintained by the defendants. In case of any damage or breakage to the pipe upto 8' height shall be got repaired by defendants on their own expense. In case any damage or breakage occurs above 8' height the same shall be repaired by Plaintiff No.2. (3) That plaintiff No.2 has one hole, one window at first floor and one window at second floor in southern wall in the jukak towards defendants, the defendants shall not cause any hindrance in flow of air, water or light in the same. In this jukak there exists two windows at first floor of defendants also. No party shall have right

to throw waste material or to place any equipment in this jukak. The compromise has been verified and both the parties shall remain bound by the same. Date: 01.03.1983.

*Sd/-
Sub Judge, Ist Class,
Kaithal
02.03.1983”*

In the year 2009, the petitioner filed an application before the Executing Court complaining therein that the respondents, in violation of the aforesaid decree dated 02.03.1983, had raised construction which was blocking air and light to come into the petitioner's premises.

Through order dated 18.08.2015, the Executing Court dismissed the petitioner's execution application. Such order is under challenge in the present proceedings.

Learned counsel for the petitioner has been heard.

As per the afore-quoted decree dated 02.03.1983, the respondents were enjoined from creating any hindrance qua the coming of light and air in the petitioner's premises. In the execution proceedings instituted by the petitioner in the year 2009 i.e. after 26 years of the passing of the decree, the petitioner complained that after passing of the afore-quoted decree and in violation thereof, the respondents had raised construction in their premises which has obstructed the flow of light and air to her premises.

The evidence led by the petitioner in support of her execution application does not prove as to when the disputed construction was made by the respondents. On the contrary, the evidence produced and proved by

the respondents reveals that while making the disputed construction, the respondents have left ample space for air and light to flow to the petitioner's premises. The stair-case made by the respondents is also found to be not concrete but of iron strips which permits air and light to travel through them to the petitioner's premises.

The Executing Court, after sifting the evidence led by the parties, has also categorically opined that the disputed construction by the respondents does not create any hurdle in the free flow of air and light to the petitioner's premises.

In view of the above, no interference is warranted in the order under challenge in the present proceedings especially when the disputed construction has existed for at least over a decade.

Dismissed.

(DEEPAK SIBAL)
JUDGE

August 22, 2019

Jyoti 1

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No