

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

CR No.6802 of 2019 (O&M)

Date of decision: 30.10.2019

Balbir Singh and others

.... Petitioners

Versus

Jaswinder Singh

.... Respondent

Before: Hon'ble Mr. Justice B.S. Walia.

Present: Mr. Inderjit Sharma, Advocate for the petitioners.

B.S. WALIA, J.

[1] Prayer in the revision petition under Article 227 of the Constitution of India is for setting aside order Annexure P/9 dated 18.09.2019 passed by the learned Addl. Civil Judge (Sr. Div.), Dasuya, District Hoshiarpur dismissing the objections filed by the petitioners in execution No.54 of 2018 in case titled as Jaswinder Singh vs Balbir Singh and others and for allowing the objections, Annexure P/7.

[2] Learned Counsel contended that the civil suit for specific performance filed by the decree-holder was partly decreed for recovery of earnest money of Rs. 6 lakhs along with interest @ 6 % p.a. from the date of execution of agreement to sell till the filing of the suit etc vide judgment and decree dated 21.05.2011 passed by the then learned Addl. Civil Judge (Sr. Div.), Dasuya and the petitioners /JDs complied with the same by depositing Rs.8,73,000/- in the Sub Treasury Office, Dasuya on 21.09.2011. However, judgment and decree dated 21.05.2011 was set aside by the learned Addl.

District Judge, Hoshiarpur vide judgment and decree dated 13.05.2014 and the case remanded for fresh trial whereupon the suit was again decreed by the learned Additional Civil Judge (Sr.Div.) Dasuya vide judgment and decree dated 11.01.2017 for Rs. 6 lakhs along with interest @ 6 % p.a. from the date of agreement to sell till the filing of the civil suit and future interest @ 6 % p.a. w.e.f. the date of filing of the suit till final realisation of the same whereupon the decree holder filed execution petition No. 54 /2018 for recovery of Rs. 3,32,757/- and the executing court passed order dated 09.08.2019 attaching the land of the petitioners/JDs by proceeding ex parte. Objections were filed by the petitioners/JDs that Rs. 8,73,000/- had already been deposited by them on 21.09.2011 in compliance of judgment and decree dated 21.05.2011 and the decree holder had received said amount from the Treasury but even then had filed execution petition for recovery of Rs. 3,32,757/- by concealing receipt of aforesaid amount. However, the objections were dismissed vide order Annexure P/9 dated 18.09.2019 without appreciating the facts in the correct perspective. .

[3] I have considered the submissions of learned counsel for the petitioners. It needs noticing that stand of the decree-holder in the reply to the objections was that the suit for specific performance filed by him was decreed on 21.05.2011 whereas amount of Rs.8,73,000/- was received in the year 2017 and said fact was clearly mentioned in the execution filed as also that remaining amount of Rs.3,32,757/- was yet to be recovered from JDs.

[4] The learned Addl. Civil Judge (Sr. Div.), Dasuya rejected the plea of the petitioners/JDS that on deposit of Rs. 8,73,000/- on 21.09.2011 in the Sub Treasury, judgment and decree dated 21.05.2011 stood satisfied as judgment and decree dated 21.05.2011 was set aside and the case remanded

by the learned appellate court vide judgment and decree dated 13.05.2014,

consequently, Rs.8,73,000/- deposited by the JDs in the treasury on 21.09.2011 did not belong to the decree-holder, and the JDs were entitled to withdraw the same from the treasury, but they did not withdraw said amount. Accordingly, the objections were rejected and the decree-holder held entitled to the amount claimed in the execution petition.

[5] Admittedly, the petitioners/JDs deposited a sum of Rs.8,73,000/- on 21.09.2011 pursuant to the judgment and decree dated 21.05.2011 passed by the learned Addl. Civil Judge (Sr. Div.), Dasuya. However, the aforementioned judgment and decree was challenged by the respondent/decreed-holder and vide judgment and decree dated 13.05.2014, the learned Addl. District Judge, Hoshiarpur set aside the same and remanded the case for fresh trial.

[6] The amount of Rs.8,73,000/- deposited by the petitioners/JDs in the treasury pursuant to judgment and decree dated 21.05.2011 did not belong to the respondent/decreed-holder in view of his having filed an appeal and the case having been remanded to the trial Court for fresh decision in accordance with law after setting aside the judgment and decree dated 21.05.2011 passed by the learned Addl. Civil Judge (Sr. Div.), Dasuya. Thereafter, learned Addl. Civil Judge (Sr. Div.), Dasuya passed judgment and decree dated 11.01.2017 holding the respondent/decreed-holder entitled to recover Rs.6,00,000/- along with interest @ 6% per annum till final realization etc.

[7] On the passing of judgment and decree dated 13.05.2014 by the learned Addl. District Judge, Hoshiarpur setting aside judgment and decree dated 21.05.2011 passed by the learned Addl. Civil Judge (Sr. Div.), Dasuya the amount i.e. Rs.8,73,000/- deposited by the JDs in the treasury belonged

to the JDs and the JDs were entitled to withdraw the same from the treasury but they did not withdraw the amount for reasons best known to them.

[8] Accordingly, on passing of judgment and decree dated 11.01.2017 holding the respondent/decreed-holder entitled to recovery of Rs.6,00,000/- along with interest @ 6% per annum from the date of execution of agreement to sell till the date of filing of the suit and further future interest @ 6% per annum from the date of filing of the suit till the final realization of the above said amount, the learned Executing Court could not have gone beyond the decree. Besides, the decree holder mentioned receipt of Rs. 8,73,000/- (in the year 2017) in the execution petition and merely claimed balance amount of Rs. 3,32,757/- in terms of judgment and decree dated 11.01.2017. Learned Counsel has failed to show that the amount of Rs. 3,32,757/- claimed in the execution petition is not the balance amount payable in terms of judgment and decree dated 11.01.2017 after receipt of Rs. 8,73,000/- by the decree holder in the year 2017.

[9] In the light of the position as noted above, no ground whatsoever has been shown warranting interference with order Annexure P/9 dated 18.09.2019 passed by the learned Addl. Civil Judge (Sr. Div.), Dasuya.

[10] The revision petition is bereft of merit and is accordingly dismissed in limine.

(B.S. Walia)
Judge

30.10.2019
amit

1. Whether speaking/reasoned : Yes/No.
2. Whether reportable : Yes/No.