

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

CR No.698 of 2020(O&M)

Date of decision: 31.1.2020

Darshan Singh

.....Petitioner

VERSUS

Kuldeep Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Pawan Bansal, Advocate for the petitioner.

REKHA MITTAL, J. (Oral)

Challenge in the present petition has been directed against order dated 28.11.2019 passed by the Executing Court, Jagraon vide which objections to the execution filed under Section 47 read with Section 151 of the Code of Civil Procedure, 1908 (in short 'the Code') were dismissed and application under Order 6 Rule 16 of the Code has been allowed.

Counsel for the petitioner would argue that execution application in respect of money decree passed in favour of the respondent has been signed by Gurdev Singh, a Clerk working with counsel of the decree holder and on Vakalatnama signed by said Gurdev Singh, there is no reference that he was appointed as an attorney by decree holder – Kuldeep Singh. Another submission made by counsel is that entire transaction with regard to liability of petitioner/JD is based upon fraud.

Counsel for the petitioner, in response to a query, would fairly inform that power of attorney dated 07.12.2018 purported to be executed

by Kuldeep Singh in favour of Gurdev Singh is available on record and certified copy thereof was produced for perusal and appreciation of the Court. The Executing Court, in the order impugned, has held that Kuldeep Singh/ decree holder appeared in the Court and made statement that he had executed power of attorney in favour of Gurdev Singh authorizing him to file application for execution of the decree. In the given circumstances, it is difficult to accept contention of the petitioner that Gurdev Singh could not file application for execution merely because on Vakalatnama filed in favour of counsel or in the execution application, it has not been mentioned that he is attorney of Kuldeep Singh.

So far as plea of the petitioner that transaction on the basis whereof suit for recovery has been filed is a fraudulent one, the said issue was required to be raised by the petitioner in the suit. The Executing Court cannot go beyond the decree passed by the trial Court. In this view of the matter, the second submission made by counsel is patently misconceived and accordingly rejected.

No other point has been raised.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine.

JANUARY 31, 2020
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no