

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

Sr. No.113

CR-3110-2021 (O&M)

Date of decision : 03.12.2021

Anand Kumar (now deceased) through his LRs

..... Petitioners

VERSUS

Rakesh Sharma Gautam

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. L.R. Sharma, Advocate, for the petitioners.

SUDHIR MITTAL, J. (Oral)

The petitioners are the successors-in-interest of the judgment debtor, namely, Anand Kumar. A decree for recovery of money was passed against him on 06.10.2018. The decree was not complied with and thus, execution was filed in which service was effected upon the judgment debtor. However, despite service, he did not appear before the executing Court and thus, was proceeded against ex parte vide order dated 31.07.2019. Subsequently, he has died on 16.05.2021. The executing Court has issued order dated 14.10.2021 for attachment and sale of his property. After passing of the said order, the petitioners preferred an application for being impleaded as the LRs of the deceased-decree holder. By virtue of instant application, a prayer was made to stay the execution till the time they were impleaded as party. The application has been dismissed on the ground that judgment debtor himself had been served in these proceedings, but did not care to put in appearance. There is nothing on record to indicate that an appeal was filed against the decree sought to be executed and that a stay had been granted by the Appellate Court. Reliance upon Section 50 of the Code of Civil Procedure, 1908 has been rejected on the ground that Section 50(1)

Learned counsel for the petitioners has submitted that Section 50 CPC has been wrongly interpreted and thus, the impugned order deserves to be set aside.

A bare perusal of Section 50(1) CPC makes it clear that the decree holder 'may apply to the Court' for execution of the decree against LRs of a deceased-judgment debtor. The language indicates that the provision is not mandatory. The decree holder may implead the LRs, where, there is a necessity to do the same. In this case, the judgment debtor himself was served and his property has been attached for sale. There was, thus, no need to implead his LRs. If, the petitioners felt that they had some tangible or valid objection to be raised, they would have appeared much earlier. The present application has been filed solely with the intention of delaying of the executing proceedings.

In view of above, the revision petition has no merit and is dismissed.

(SUDHIR MITTAL)
JUDGE

03.12.2021

Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No