

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

CR-2105-2015 (O&M)

Date of Decision: November 24, 2022

Jagdish

...Petitioner

AND

Raj Singh and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.N.K.Sharma, Advocate
for the petitioner.

Mr.A.S.Ghangas, Advocate
for respondent No.1.

ARCHANA PURI, J.

Challenge in the present revision petition is to the orders dated 04.03.2015 (Annexure P-1) and 11.03.2015 (Annexure P-2 colly), whereby, warrants of possession issued qua possession of half of the entire property of Judgment Debtor No.1 and upholding of 3rd party objections, was allowed. Also, further prayer had been made in the revision petition for bringing up the case file bearing Civil Suit No.38-I/2004 titled as '*Raj Singh vs. Jagdish*', decided on 04.11.2006.

Perusal of the paperbook reveals that during the pendency of the execution, the Judgment Debtor filed an application (Annexure P-3) to bring up the case file bearing Civil Suit No.38-I/2004 titled as '*Raj Singh vs. Jagdish*', decided on 04.11.2006. Perusal of the application reveals about the reference made to the operative part of the decree, whereby, respondent No.1-plaintiff was required to pay Court fee, within 15 days from the date of

pronouncement of the judgment i.e. 04.11.2006, for taking possession of the suit property and it is also stated therein, about the *ad valorem* Court fee having not been deposited and therefore, respondent No.1-plaintiff, had no right or authority to seek possession, on the basis of the decree.

Copy of the judgment under execution has been placed on record as Annexure P-4, which reveals about the judgment to have been passed, subject to payment of *ad valorem* Court fee, on prayer of possession, with regard to the suit property, by the plaintiff, within 15 days from now (date of judgment). However, without considering the contents of said application, vide impugned order dated 04.03.2015 (Annexure P-1), the Executing Court had simply observed that there is no necessity to take up the said file, as the judgment which has attained finality, is not disputed by the parties. However, there is no mention made with regard to the payment of *ad valorem* Court fee.

Now, learned counsel for respondent No.1 submits that the Court fee had been deposited and wrong statement had been made by learned counsel for the petitioner, at the inception stage of the revision petition on 25.03.2015, about the non-deposit of Court fee. However, learned counsel for the petitioner has placed on record copy of the application/form, vide which, the petitioner had applied for obtaining certified copy of the order, relating to the deposit of the *ad valorem* Court fee and therein, report was made that there is no such order on the case file.

In fact, learned counsel for respondent No.1 submits that order regarding deposit of Court fee was passed on the application itself and no separate *zimini* order was passed. Learned counsel for the petitioner also

disputes about the Court fee having not been deposited on the judicial stamp papers. In the light of the same, all the aforesaid questions require to be adjudicated by the Executing Court, once the application (Annexure P-3) had been filed, thereby, bringing it to the notice of the Court, about the manner of decree having been passed, which required to be executed. However, no reasoning, as such, had been given in the impugned order, vis-a-vis, the contents of the said application, qua deposit of *ad valorem* Court fee.

In these circumstances, the revision petition is partly allowed and the impugned order dated 04.03.2015 is set aside, with the directions to concerned Executing Court to decide the application (Annexure P-3) afresh, while taking into consideration the contents of the same and adjudicate on the question of payment of Court fee, in consonance with the judgment dated 04.11.2006, which was further modified by the lower Appellate Court, vide judgment dated 12.03.2007.

Now, in the given circumstances, parties are directed to make appearance before the concerned Executing Court on 08.12.2022. The operation of the impugned order dated 11.03.2015, which is also under challenge, is stayed, till the decision on the application (Annexure P-3).

The execution, in hand, relates to the year 2008. As such, it is desired and expected from the Executing Court to dispose of application (Annexure P-3), expeditiously, preferably within six weeks.

November 24, 2022
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No