

CR-321-2022

Date of Decision: 02.02.2022

Karam Singh

....Petitioner

VS

Gurmail Kaur and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Deepak Sharma, Advocate
for the petitioner

SUDHIR MITTAL, J. (Oral)

The defendant/accused is the petitioner. He is aggrieved by order dated 22.12.2021 passed by the Executing Court whereby his objections to the execution preferred by respondent No. 1 have been dismissed.

Respondent No. 1 had filed a civil suit for possession as well as a criminal complaint under Section 420 IPC against the petitioner and respondents No. 2 and 3. The matter was compromised vide written compromise dated 18.01.2017. In terms of the compromise, the defendants/accused were required to pay a sum of Rs. 7,50,000/- on or before 15.06.2017. In case of failure to make the payment, the plaintiff/complainant – respondent No. 1 was at liberty to reopen the cases and to file a contempt petition.

It is evident that the compromise has fallen through and money in terms thereof has not been paid. Thus, the plaintiff/complainant–respondent No. 1 preferred an execution. The petitioner filed objections thereto which have been rejected. The Executing Court has held that the order passed on the basis of the compromise is an executable decree and the objection that execution is not maintainable has no merit.

Learned counsel for the petitioner has reiterated the objection raised before the Executing Court. According to him, an order passed on the basis of a

compromise in a civil suit does not amount to a decree and can not be executed. Moreover, in terms of the compromise the aggrieved party could have reopened the cases and could also have filed a contempt petition. Thus, the impugned order deserves to be set aside.

Section 2(2) of the Code defines “decree”. It is a formal expression of adjudication by a Court determining the rights of the parties. Section 89 of the Code provides for settlement of disputes outside the Court. According to the said provision, a dispute may be settled outside the Court by way of Arbitration, Conciliation, Lok Adalat or Mediation. Although a settlement on the basis of compromise between the parties is not specifically referred to in the said provision, the same can be considered under the sub head of “Mediation”. A perusal of the compromise dated 18.01.2017 also shows that it was reached with the intervention of local friends and respectables and, thus, the element of mediation is present. Order passed on the basis of compromise is dated 20.01.2017 which states that the suit is decided in terms of the compromise and that the parties shall remain bound by the compromise thereof. This order would be covered by the definition of decree as the dispute between the parties has been settled and *inter se* rights have been decided on the basis thereof. The argument that the order dated 20.01.2017 is not a decree is, thus, rejected.

The other limb of the argument is that since the parties have been directed to remain bound by the terms of the compromise, respondent No. 1 could have filed for reopening of the cases as well as preferring a contempt petition. This argument places onus upon one party to the compromise to abide by the terms thereof whereas the other party is free to flout its terms. This is not permissible in law. A party seeking to enforce the terms of the compromise must fully abide by the terms thereof and can not selectively get the terms of compromise enforced. It

For the aforementioned reasons, the revision petition has no merit and is dismissed.

02.02.2022

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(SUDHIR MITTAL)
JUDGE

Whether speaking/reasoned
Whether Reportable :

Yes/No
Yes/No