

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

CR-1011-2022
Decided on : 12.07.2022

Gurmukh Singh (deceased) through LR Petitioner

Versus

Harvinder Singh Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. G.S.Saini, Advocate
for the petitioner.

Manjari Nehru Kaul, J.(Oral)

Instant petition has been filed by the petitioner (judgment debtor) for setting aside of the order dated 21.11.2019 passed by Civil Judge (Jr. Divn.) Ferozepur vide which objections filed by the petitioner were dismissed.

Learned counsel for the petitioner submits that during the pendency of criminal revision petition i.e. CRR No.4121 of 2016 before this Court, the matter was amicably settled between the parties and an affidavit dated 19.12.2016 to the said effect was executed by the respondent-decree-holder qua the receipt of full and final payment of Rs.5 lacs. He further submits that however after the husband of the petitioner expired on 16.07.2018, the respondent-decree-holder turned turtle and was in denial qua the receipt of payment. Still further, learned counsel submits that the husband of the petitioner had paid Rs.5 lacs in full and final payment to the respondent-decree-holder, therefore, the execution petition was not

maintainable, which fact was erroneously ignored by the Courts below.

Heard learned counsel and perused the relevant material available on record.

A perusal of the reply (Annexure P-4) filed by the respondent-decree-holder to the objections filed by the petitioner-judgment debtor reveals that the respondent-decree-holder has taken a categorical stand that the affidavit dated 19.12.2016 was executed for securing the suspension of sentence, awarded to the husband of the petitioner, in a case under Section 138 of the Negotiable Instruments Act and no payment of Rs.5 lacs was ever received by him, as alleged by her. Not only this, the petitioner failed to place on record any proof regarding the payment of Rs.5 lacs allegedly made to the respondent-decree-holder. Still further, the affidavit dated 19.12.2016 (Annexure P-5) pertains to compromise only in the proceedings under Section 138 of the Negotiable Instruments Act and not to the suit in question or even execution proceedings.

Before concluding, it would be not out of context to notice that the husband of the petitioner was proceeded against ex parte vide order dated 20.10.2016. He died on 16.07.2018 and the ex parte judgment and decree was passed on 04.10.2018 that is much prior to his death. The husband of the petitioner neither moved any application for setting aside of the ex parte order dated 20.10.2016 nor challenged the ex parte judgment and decree before any Court. This Court, therefore, concurs with the observations of the Court below that the Executing Court cannot go beyond the decree and dwell into the merits of the same, at the time of execution. The Executing Court was perfectly justified in dismissing the objections as

the ex parte judgment and decree dated 04.10.2018 had attained finality.

As a sequel to above, the present petition being devoid of any merit stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

12.07.2022
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Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No