

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

CR-2076-2020 (O&M)

Date of decision: 16.05.2022

Bhan Singh (since deceased) through his L.R

....Petitioner

Versus

M/s Creative Buildwell Pvt. Ltd.

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Mohit Rathee, Advocate for the petitioner
 Mr. Navneet Singh, Advocate for the respondent

ANIL KSHETARPAL, J (Oral)

During the pendency of the first appeal filed by the respondent herein, the parties had settled their dispute and they had filed a deed of settlement before the First Appellate Court. On the basis thereof, the First Appellate Court on 7th February 2018 disposed of the appeal. As per the settlement deed, the petitioner (plaintiff in the suit) was required to pay rupees Rs.18,20,393/- to the defendant within a period of 60 days from the date of settlement and in case of the failure, the defendant was held entitled to recover the amount alongwith interest at the rate of 15% per annum. In the execution petition filed by the defendant claiming that the plaintiff has failed to pay the amount, the petitioner has claimed that he has already paid the settled amount. The court has held that there is no payment by the plaintiff to the defendant. The petitioner relies upon the affidavit of Manish Saxena son of Sh. S.K Saxena, authorised representative of M/s Creative Buildwell Private Limited to prove that the payment has been made. Learned counsel

representing the respondent submits that the aforementioned affidavit has been forged by the petitioner. In these circumstances, the question which arises for consideration before this court is as to whether the petitioner has already paid the amount of Rs.18,20,393/- on or before 13th March 2018, which led to the making of affidavit of Manish Saxena.

In the considered opinion of the Court, such kind of matter is required to be decided while permitting the parties to lead evidence in order to prove their side of the case. The executing Court has erred in forming an opinion that there is no payment, without granting any opportunity to the plaintiff to lead evidence and to prove his assertion, particularly, when there is an affidavit of Manish Saxena stating the payment of the settled amount between the parties. Consequently, the order under challenge is set aside. The Executing Court is requested to permit the parties to lead evidence to prove the payment in terms of the settlement. Thereafter, the court will proceed to decide the execution petition.

Disposed of.

All the pending miscellaneous applications, if any, are also disposed of.

16.05.2022

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE