

CM-2894-CII-2023
CM-2895-CII-2023 in/&
CR-1017-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-2894-CII-2023
CM-2895-CII-2023 in/&
CR-1017-2023 (O&M)
Date of Decision :15.02.2023

Suraj Paul Dias

...Petitioner

Versus

Vishal Gupta

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Amar Vivek Aggarwal, Advocate with
Ms. Bhawana, Advocate for the petitioner.

Mr. Vinay Kumar Pandey, Advocate for the respondent.

* * *

Harsimran Singh Sethi, J. (Oral)

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As prayed for, application is allowed.

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In compliance of order dated 14.02.2023 of this Court, Mr. J.K. Goel, Advocate has produced the calculation sheet.

In the present revision petition, orders dated 11.01.2013, 09.02.2023, 06.01.2013 and 07.01.2023 (Annexures P/1, P/2, P/4 & P/5) respectively, which have been passed in the execution of the judgment and decree dated 18.10.2018 passed by the trial Court, have been challenged.

Though, large number of objections have been taken by the

petitioner-judgment debtor for the execution of the decree in question but ultimately the parties have agreed to certain terms and conditions for the execution of the decree in question.

Learned counsel for the petitioner-judgment debtor submits that as of now, certain movable properties of the petitioner-judgment debtor have been attached due to which, it has become difficult for the petitioner-judgment debtor to satisfy the decree in question. Further, it has been argued that the objections have been raised by the wife of the petitioner-judgment debtor as the petitioner-judgment debtor was indisposed and was admitted in hospital and the said objections filed by wife of the petitioner-judgment debtor have been dismissed by the Executing Court on the ground that the wife of the petitioner-judgment debtor has no occasion to raise the said objections against the decree in question as no decree was passed against her as the objections could have been raised by the petitioner-judgment debtor only.

Learned counsel for the respondent submits that the decree in question was passed more than 04 years ago and despite best efforts, the same is yet to be satisfied and all sort of objections have been raised by the petitioner-judgment debtor to evade the execution of the decree in question. Learned counsel for the respondent further submits that the only endeavor of the respondent-decree holder is to get the decree executed so as to get the entitled benefit and nothing more.

Learned counsel for the respondent further submits that keeping in view the calculations submitted before the Executing Court, the same were accepted by the Court as the calculations were found to be within the

parameters of the decree and though, the petitioner-judgment debtor has deposited certain amount out of the total due keeping in view the undertaking submitted by him but even as of now a sum of Rs.27,96,415/- is yet to be paid by the petitioner-judgment debtor hence, till the said amount is paid, the decree in question is not satisfied.

Learned counsel for the petitioner-judgment debtor submits that though, the Executing Court has arrived at a particular amount, keeping in view the calculations submitted by the decree holder but the only objection of the petitioner-judgment debtor is qua the date of handing over the possession of the property in question to the respondent-decree holder. Learned counsel for the petitioner-judgment debtor submits that as per the petitioner-judgment debtor, the property in question was vacated on 26.04.2017 whereas, the calculations of the liability of the petitioner-judgment debtor has been calculated up to 08.04.2019. Hence, as there is a dispute of two years, which dispute needs to be resolved by the Executing Court before finally ascertaining the liability of the petitioner-judgment debtor, it cannot be said that the petitioner-judgment debtor is running away from execution of the decree in question.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

Learned counsel for the parties agreed on one thing that in case date of handing over the possession of the property in question is taken as April, 2019, the calculations which were submitted before the Executing Court were correct. But dispute is whether property in question was vacated in April, 2017 or in April, 2019. Keeping in view the said dispute between

the parties, the same needs to be adjudicated by the Executing Court before computing the liability of the petitioner-judgment debtor under the decree.

Learned counsel for the petitioner submits that in order to show his bonafide and not to create hurdle in the execution of the decree in question as of now out of the total decreetal amount of Rs.41,74,915/- a sum of Rs.13,78,500/- has already been paid and the remaining amount is Rs.27,96,415/- and out of outstanding amount so calculated, a sum of Rs.14,00,000/- will be paid by the petitioner-judgment debtor before the Executing Court to be disbursed to the respondent-decree holder within a period of seven days from today and for the remaining amount due surety will be given to the satisfaction of the Executing Court within the said period of seven days from today.

Learned counsel for the petitioner-judgment debtor submits that after the Executing Court decides the objections as to on which date the property in question was vacated by the petitioner-judgment debtor, in case it is found that the petitioner-judgment debtor has paid more than his liability, the Executing Court be directed to pass an appropriate order for the refund of the excess amount and in case, the petitioner-judgment debtor is found liable for any amount in excess of the amount already paid (Rs.13,78,500/-+14,00,000/- + the remaining amount, for which, the surety has been paid), the said liability will be discharged within a period of seven days from the date of decision the objections raised by the petitioner-judgment debtor. Learned counsel for the petitioner-judgment debtor also undertakes that in respect of the amount for which surety will be given, if found liable to pay the said amount, petitioner will discharge the said

liability within a period 15 days from the date his objections are decided.

Learned counsel for the respondent submits that respondent is only concerned with his money as per the decree and in case his interest is secured, he will not put the petitioner-judgment debtor in any discomfort though, the respondent-decree holder has not been treated in a fair manner by the petitioner-judgment debtor.

Keeping in view the above, the present revision petition is disposed of with the direction that apart from Rs.13,78,500/- already paid by petitioner-judgment debtor, a sum of Rs.14,00,000/- will be deposited by the petitioner-judgment debtor within a period of seven days from today before the Executing Court to be handed over to the respondent-decree. For the remaining amount of Rs.13,96,415/-, the petitioner-judgment debtor will give surety to the satisfaction of the Executing Court within same period of seven days and after tendering of the said amount by the petitioner-judgment debtor, before the Executing Court within next period of 10 days, the Executing Court will decide the objection raised by the petitioner-judgment debtor deciding as to on which date, the property in question was handed over to the decree holder so as to calculate the total liability of the petitioner-judgment debtor. After deciding the objections in case, it is found that the petitioner-judgment debtor has already discharged his liability, no further proceedings will be undertaken. In case, Executing Court finds that some liability will still remain with the petitioner-judgment debtor, learned counsel for the petitioner-judgement debtor has undertaken before this Court that the same will be complied with within a period of 15 days from the date of said decision. In case it is found that petitioner-judgment debtor

has deposited the amount more than his liability, the same will be refunded back to the petitioner-judgment debtor within period of seven days from the date of said decision of deciding the objections.

Learned counsel for the respondent-decree holder has undertaken that in case the respondent-decree holder has been paid more amount than his entitlement as per the final order passed after decision of the objections raised by the petitioner-judgment debtor, the excess amount if any, will be deposited with the Executing Court for its onward transmission to the petitioner-judgment debto, within a period of seven days of the order.

Learned counsel for the petitioner-judgement debtor submits that keeping in view the order passed by the Executing Court, family of the petitioner-judgment debtor which includes his wife, mother and two young daughters are facing harassment due to the attachment of the property hence, the same may kindly be released from attachment.

In respect of the said prayer of the learned counsel for the petitioner-judgment debtor, in case the petitioner-judgment debtor complies with the terms and conditions as undertaken by him as depicted hereinbefore in the present order on depositing a sum of Rs.14,00,000/- within a period of seven days from today and giving due surety of the remaining amount of Rs,13,96,415/- to the satisfaction of the Executing Court within a said period of seven days, Executing Court is directed to pass an appropriate order releasing the attachment of the property in favour of the petitioner-judgment debtor.

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Let the parties to appear before the Executing Court on
22.02.2023.

February 15, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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