

252

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CIVIL REVISION No.1555 of 2020
DATE OF ORDER: 09.02.2023

Hari Krishan

.....Petitioner

Vs.

Dhian Singh and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: Mr.K.R. Dhawan, Advocate for the petitioner.

Nidhi Gupta, J.

Present revision petition has been filed by the decree-holder seeking setting aside of order dated 27.11.2019, Annexure P-8, passed by the learned Civil Judge, Junior Division, Chandigarh, whereby the execution filed by the petitioner has been dismissed for being fully satisfied .

2. Brief facts of the case are that the respondent No.1 herein, had taken a loan of Rs.4,50,000/- from the petitioner and undertaken to repay the said amount in three monthly instalments of Rs.1,60,125/- each. Thereafter, the respondent No. 1 failed to pay the loan amount as well as interest thereon as per terms and conditions of the agreement. Subsequently, respondent No.1 issued cheque No.581390 dated

30.12.2002 to discharge his liability towards the loan amount as well as interest thereon.

The cheque issued by respondent No.1 was dishonoured, therefore the petitioner filed complaint under Section 138 of the Negotiable Instruments Act (for short 'NI Act') against the respondent No.1, as well as recovery suit under Order 37 of the Civil Procedure Code against all the respondents. Similar proceedings were filed by the father of the petitioner Sh.Sant Kumar, who also filed suit for recovery of Rs.6,05,179/- against all the respondents, and a criminal complaint under Section 138 of the NI Act against respondent No.1.

Vide judgment and decree dated 14.02.2017, the suit filed by the petitioner was decreed for an amount of Rs.6,86,260/- along with cost amounting to Rs.27,718/-. In the complaint case, respondent No.1 was convicted and sentenced to undergo rigorous imprisonment for two years and pay Rs.10,00,000/- as compensation, vide judgment dated 13.05.2013. The suit filed by the father of the petitioner was also decreed vide judgment and decree dated 14.02.2017 and in complaint case, respondent No.1 was convicted and sentenced to undergo rigorous imprisonment for two years and to pay Rs.9,00,000/- as compensation vide judgment dated 13.05.2013.

Against the judgments of conviction in both the cases, respondent No.1 filed appeals in the Court of Sessions Judge, Chandigarh. With the intervention of the Court of Ld.Addl. Sessions Judge, Chandigarh, the matter was compromised in both the appeals and the statement of both the parties were recorded in both the cases and in view of the

statements of both the parties, both the cases were adjourned sine die vide order dated 20.02.2017.

As per the compromise entered into between both the parties, respondent No.1 paid Rs.1,00,000/- and undertook to pay Rs.50,000/-, including the Rs.10,000/- paid on 20.02.2017, by 31.05.2017; and to pay Rs.10,000/- per month till 31.05.2018; and entire remaining amount of Rs.2,80,000/- by 31.05.2018. The respondent No.1 further recorded his statement that if he fails to adhere to the above said schedule of payment, whatever amount had been paid by him, shall be forfeited and the decree-holder shall be entitled to execute the judgments and decrees in both the cases even against the guarantors. Thereafter, the petitioner filed execution petition for executing the judgment and decree dated 14.02.2017. Respondent No.1 filed objections to the said executing petition stating therein that he had paid the entire amount by the agreed date, which is 31.05.2018 and therefore, the execution petition was not maintainable. It is against the dismissal of the said Execution petition that the petitioner/ Decree Holder has approached this Court by way of the present Revision petition.

3. Learned counsel for the petitioner submits that the impugned order is incorrect, as the respondent No.1 had not made the payments as per agreed terms/ schedule and, therefore, the petitioner was entitled to get the judgment and decree dated 14.02.2017 executed. It is submitted that it was incumbent upon the learned Executing Court to record the satisfaction of the petitioner as decree-holder. It is submitted that the learned Executing Court has failed to appreciate that the

respondent No.1 had failed to make the payments as per schedule and therefore, the amount already paid by him ought to have been forfeited in terms of the compromise entered into between the parties.

No other arguments is raised on behalf of the petitioner.

4. I have heard the learned counsel.

5. It is admitted by the petitioner that the respondent No.1 has cleared his entire dues by the stipulated age of 31.5.2018, *albeit*, payment was not made strictly as per the schedule as agreed upon between the parties. It is further admitted by Id. Counsel that in fact, respondent no. 1 had clear his dues *prior* to the stipulated date of 31.5.2018. It is further admitted that the petitioner had filed the execution on 05.09.2017 i.e. prior to the date 31.5.2018, as stipulated in the compromise dated 20.02.2017.

6. In this regard, relevant findings in the impugned judgment are the following:-

“So, from the perusal of the said compromise which is not denied by DH, it transpires that the JD/objector had to pay an amount of Rs.4,50,000/- by the end of 31.05.2018, but the DH has filed the present execution on 05.09.2017 i.e. prior to the date stipulated in the compromise dated 20.02.2017. Even, while filing the present execution, the DH has not disclosed the said fact of compromise with the JD/objector nor has he disclosed anything as to the effect of receiving or non-receiving of any amount from the JD/objector. So, in this regard, the DH is guilty of concealment of material facts.

Ld.Counsel for DH argued that as the JD was liable to adhere to the payment schedule and as he failed to adhere the payment schedule, so, any amount paid by the JD is liable to be forfeited by the DH. But, this contention of Ld. Counsel for DH does not assume any significance as though the JD/objector had

made defaults in making payment of initial amount but later on he cleared the entire compromised amount well before the stipulated date i.e. 31.05.2018 and this fact, has not been denied by the DH, which means that the DH has accepted the amounts paid by the JD/objector and he had not taken any initiative to return the amount so received by him from the JD/objector, even after the filing of the present execution, which means that the DH had waived off the said stipulation and had agreed to receive the payment paid to him by the JD. So, when the JD/objector had paid the entire compromised amount well before the stipulated period and the DH has already received the same, so, the DH cannot be allowed to enrich himself at the cost of the JD nor can he be allowed to resile from the compromise, when he himself has waived off the payment schedule by accepting the entire compromised amount inspite of default being committed by JD/objector.” (Emphasis supplied)

7. Learned counsel for the petitioner is unable to controvert the above said facts as recorded in the impugned order.
8. Accordingly, I find no merit in the present petition and the same is, hereby, dismissed. No order as to costs.

09.02.2023	(Nidhi Gupta)
kanika	Judge
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No