

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR 2598/2023

Date of decision: 28.04.2023.

Krishan Kumar @ Kirshan Kumar

.....Petitioner.

Vs.

Sushil Kumar

.....Respondent

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Ajay Jain, Advocate for the petitioner.

Nidhi Gupta, J.

Present revision petition has been filed by the defendant/Judgment Debtor seeking setting aside of impugned order dated 26.4.2023 passed by Id. Addl. Civil Judge (Sr. Div.)Hisar whereby application Annexure P-16 filed by the petitioner seeking a direction to the sole respondent/Decree Holder to file a fresh execution petition as per decree sheet dated 19.4.2023, has been dismissed.

Brief facts of the case, in chronological order, are culled out hereunder:-

19.3.2015: Parties herein entered into an agreement dated 19.3.2015 whereby petitioner sold four plots as described in the head note of the plaint (hereinafter referred to as the suit property) to the petitioner for a total sale consideration of Rs.30.94 lacs

17.7.2015: Petitioner failed to execute the sale deed in favour of the respondent by the fixed date i.e. 17.7.2015.

09.01.2017: Respondent/plaintiff filed a suit for possession of the suit property by way of specific performance of the agreement dated 19.3.2015 (Annexure P-1).

3.7.2017: Upon notice the petitioner appeared and filed detailed written statement (Annexure P-2).

26.2.2018: The parties to the *lis* compromised the matter and reduced it in terms of writing/compromise dated 26.2.2018 (Annexure P3).

26.2.2018: Matter was compromised before the Daily Lok Adalat on joint request of counsel for the parties and suit of the respondent was decreed in terms of the statement made by the parties. The compromise and copy of Award dated 26.2.2018 passed by the Daily Lok Adalat is Annexure P-3 and Annexure P-4 respectively. As per above said compromise entered into between the parties the petitioner was required to pay a sum of Rs.16.50 lacs to the respondent by 10.5.2018, and upon failure of which petitioner was bound to register and execute sale deed in favour of the respondent.

22.5.2018: As petitioner failed to do the needful by 10.5.2018, the respondent was constrained to file execution petition (Annexure P-5) seeking to execute the Award dated 26.2.2018.

3.11.2018: As petitioner failed to appear before the Executing Court he was proceeded against ex parte vide order dated 3.11.2018.

25.11.2019: The Executing Court appointed Court Commissioner to get the sale deed executed and registered in pursuance to which sale deed no.8090/25.11.2019 was executed and registered in favour of the respondent.

9.12.2019: Executing Court directed the Bailiff to handover possession of the property in dispute after

removing any person bound by the decree but may refuse to vacate the same.

16.12.2019: Petitioner filed an application for setting aside order dated 3.11.2018 whereby he had been proceeded against ex-parte.

8.1.2020: Vide order dated 8.1.2020 Id. Executing Court granted one opportunity to petitioner/JD to file objections against execution in view of the fact that petitioner agreed to make payment of Rs.16.50 lacs plus other expenses to the DH. Vide said order Id. Executing Court did not set aside the ex-parte proceedings, however, permitted the petitioner to join the proceedings from the date of filing of application dated 16.12.2019 wherein it was recorded that the petitioner is ready to make the payment of Rs.16.50 lacs in compliance of the order/Award dated 26.2.2018 along with registry charges and other charges/penalty to be imposed by the Court.

22.1.2020: In pursuance of the above said order petitioner filed his objections. It is further pleaded case of the petitioner that he made all attempts to make the payment of Rs.16.50 lacs to the respondent, however, it was respondent who kept on prevaricating the matter on one pretext or the other and refused to accept the payment.

24.1.2020: Respondent filed reply (Annexure P-7) to the above said objections filed by the petitioner.

28.1.2020: Vide order dated 28.1.2020 (Annexure P-8) Executing Court dismissed the objections preferred by the petitioner.

16.3.2023: It is case of the petitioner that on mistaken legal advice he challenged the order dated 28.1.2020 passed by the Id. Executing Court dismissing his objections by way

of an appeal before the ld. ADJ Hisar, however, vide order dated 16.3.2023 petitioner withdrew the above said appeal.

20.3.2023: Petitioner then filed CR 1747 of 2023 before this Court which was dismissed vide order dated 20.3.2023 (Annexure P-10).

21.3.2023: The ld. Executing Court issued warrants of possession qua the decretal property. Additionally, in view of the report of the Bailiff as well as keeping in view the old nature of the execution, ld. Executing Court directed that fresh warrants of possession be issued along with police help.

22.3.2023: Petitioner filed an application (Annexure P-11) seeking dismissal of the execution petition being not maintainable in the absence of decree sheet.

23.3.2023: Respondent filed reply (Annexure P-12) to the abovesaid application of the petitioner inter alia, stating therein that the said application had been filed only to delay the execution.

24.3.2023: Vide order dated 24.3.2023 (Annexure P-13) the ld. Executing Court vide speaking order partly allowed the petitioner's application to the extent that a decree sheet be drawn, and further directed that order of Executing Court qua handing over vacant possession to the DH be proceeded with as per law.

29.3.2023: Vide order dated 29.3.2023 ld. Executing Court adjourned the matter and postponed drawing of decree to 14.4.2023 in view of the request made on behalf of the petitioner that appeal had been filed before this Court and the matter was listed on 12.4.2023.

13.4.2023: The parties appeared before the ld. Executing Court wherein the petitioner again undertook to pay Rs.20 lacs to the respondent by 17.4.2023. Accordingly, ld.

Executing Court adjourned the matter for 17.4.2023 for compromise between the parties or else execution will be proceeded as per law.

17.4.2023: Petitioner brought a Banker's cheque of Rs.20 lacs, however, ld. counsel for the respondent refused to accept the said cheque as final terms of compromise had not been settled between the parties, and prayed that once terms of compromise are settled in writing he would accept the Banker's cheque.

19.4.2023: Decree sheet (Annexure P-15) was prepared in terms of order dated 26.2.2013.

19.4.2023: Vide separate order of 19.4.2023, ld. Executing Court adjourned the matter as parties were still trying to enter into a compromise and it was recorded that if the matter is not compromised by 26.4.2023 execution will be proceeded as per law.

26.4.2023: Petitioner filed present application seeking a direction to the respondent to file a fresh execution application as per decree sheet drawn on 19.4.2023 or in the alternative to get the compromised/decretal amount of Rs.16.50 lacs deposited for payment to the respondent as per fresh decree dated 19.4.2023.

It is this application which has been dismissed by the ld. Executing Court vide impugned order dated 26.4.2023.

Hence, the present revision petition.

It is submitted by the ld. counsel for the petitioner that vide Award dated 26.2.2018 the Daily Lok Adalat had directed that a decree sheet be prepared in terms of the compromise entered into between the parties. It is submitted that however, perusal of the execution petition dated 16.5.2018 (Annexure P-5) reveals that no decree sheet dated 26.2.2018 is attached. It is

submitted that therefore, the execution petition is not maintainable and liable to be dismissed. It is submitted that however, ld. Executing Court has failed to appreciate this aspect of the matter and has passed an illegal order which is impugned herein.

It is further submitted by the ld. counsel for the petitioner that he is still ready and willing to compromise the matter between the parties.

No other argument has been raised.

Heard ld. counsel.

The issue involved in the present case has been encapsulated by the ld. Executing Court in speaking order dated 24.3.2023. Relevant parts of the said order are reproduced hereinbelow:

“9. It is relevant in this regard to peruse the order dated 26.02.2018 wherein the last paragraph of the order reads as follows:-

“In view of the above statements of both the parties and the compromise Ex.C-1, the suit filed by the plaintiff is hereby decreed as per compromise Ex.C01. Compromise Ex.C-1 be made part of the decree sheet. Decree sheet be prepared accordingly. Court fees be refunded in favour of the plaintiff as per rules. Ahlmad is directed to issue the refund voucher of court fees. File be consigned to record room after due compliance”

(Manpreet Singh)
Presiding Officer, Daily Lok Adalat-cum
Addl.Civil Judge (Sr. Divn.)
Hisar

10. Perusal of this last paragraph of the order clearly reveals that the parties had approached the court stating that matter has been compromised between the parties and a written

compromise document Ex.C-1 was also duly executed between the parties and there separate statement in this regard was also recorded by the court. Shri Manpreet Singh, the then learned Additional Civil Judge (Sr. Divn.) Hisar had decreed the suit of the plaintiff in view of the compromise between the parties. He had officiated over the matter in his capacity as Presiding Officer of Daily Lok Adalat as well as Additional Civil Judge, Senior Division.

11. Order 22 Rule 3 of Civil Procedure Code deals with compromise of suit. This provision entails that when it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by way of any lawful agreement or compromise (in writing and signed by the parties), the court shall order such compromise to be recorded and shall pass a decree in accordance therewith. Therefore, the legislature duly recognizes the settlement of suits by way of compromise and has directed the court to see the lawfulness of the compromise and to record statement of the parties qua the factum of compromise so that the factum of compromise is duly recorded before the court and the court can in future bind the parties with their statement which they have got recorded before the court. The element of the compromise has to be consensual and only those comprise which are consensual can be passed by the court in a Daily Lok Adalat which is distinguished from Permanent Lok Adalat.

12. Therefore, this factum is clear on record that the parties to the civil suit/execution had compromised the matter and had approached the court who had examined the validity and lawfulness of the compromise and had recorded the statement of parties and passed order dated 26.02.2018 on basis of the same. Since the compromise statement was not honoured by the parties that an execution was filed and

which has brought us to the same moot question whether this order dated 26.02.2018 is a deemed decree or not.

13. The executing court cannot go behind a decree but in the present execution since there is no decree the executing court has to peruse the order on basis of which the present execution is pending before the court. The learned predecessor had in his judicial wisdom clearly laid down that compromise Ex.C-1 be made a part of the decree sheet. Therefore, it is clear that it was the intention of the court that a decree sheet must be drawn. The intention of the legislature as well as the Apex Court is towards the drawing of a decree. Bare language of Order 23 Rule 3 CPC clearly lays down that "the court shall pass a decree in accordance therewith". Therefore the import of the act and the interpretation of the same by court is to the effect compelling drawing of a decree. To this extent the application of the JD is allowed wherein main file which is attached with the execution be perused so that the decree sheet can be drawn when applied for.

14. But it is now relevant to look at the DH who has been suffering the present execution since the year 2018 and is of date standing with a sale deed duly executed by the court in his favour. It is also in this regard that the judgment of the Hon'ble Supreme court quoted above becomes relevant. The Hon'ble Supreme Court has clearly laid down that in the absence of a decree sheet the execution petition is maintainable and merely because the execution was filed without a decree which was never drawn by the court, cannot be made a ground to dismiss the execution all together. There is no doubt that the intention of the legislature is that a decree is to be executed and that is why the legislature as well as my predecessor had clearly mentioned that a decree sheet be drawn but the absence of

a decree sheet alone is not a sufficient ground to reject the execution which is at the fag end.

15. The JD has not complied with his statement before the court as well as the compromise that he arrived at in the court and therefore, it is apparent that JD is not approaching the court in a bonafide way to argue that he has only now discovered that there is no decree sheet on the execution file. The formal decree would be now drawn by the court when applied for but the execution as is pending before the court is maintainable and no further objections would be allowed to come before the court on basis of the decree drawn by the court. The ratio of the Supreme court judgment relied by both the counsels is clear that in the peculiar circumstances as have come before the court it is only expected for the executing court to pass and draw the decree without any delay and this act of drawing of decree is formal in nature and no objection or dispute in that regard can be entertained by the court. Once the decree is drawn, the order of the executing court qua handing over vacant possession to the DH would be proceeded with as per law and the mere formality of drawing of decree shall not push the DH back to the start and give an undue advantage to the JD who has been playing on technicalities merely to frustrate the compromise which was entered into by himself. Now, the case is adjourned to 27.03.2023 for further proceeding.”

The conduct of the petitioner is writ large in the facts and sequence of events as noticed above. Ld. Counsel for the petitioner is unable to convince this Court as to why above said reasoning and observations of the ld. Executing Court is incorrect, or why the impugned order should be interfered with.

In view of the facts and circumstances of the case as noticed above, I find no ground is made out that calls for the exercise of the revisional jurisdiction of this Court.

Dismissed.

Pending Application(s), if any, stand disposed of.

28/04/2023.
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No