

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

115

2024:PHHC:019192

CR-5177-2015

Date of decision: 12.02.2024

SATISH KUMAR AND ORS

..Petitioners

Versus

M/S DHARAM PAL SATISH KUMAR AND ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vivek Salathia, Advocate
for the petitioners.

Mr. Akhilesh Vyas, Advocate
for respondent No.1, 2, 4, 5, 7 and 8.

ANIL KSHETARPAL, J(Oral)

1. The petitioners assail the correctness of order passed by the Executing Court on 02.03.2015 while dismissing their execution petition.
2. The plaintiffs filed a suit for recovery of Rs.22,96,756.73/-, which resulted into a compromise decree dated 18.12.2006. The broad terms of the compromise are extracted as under:-

“And whereas the parties have compromised and do not want to proceed with the suit to avoid any unpleasantness. The terms of the compromise agreed between the parties are as follows :-

(i) That the party of the second part admits the liability to pay Rs.22,96,756.73/- with interest to the party of the first part as per the claim of the party of the first part set up in the plaint.

(ii) That as agreed between the parties, party of the second part also admits their liability to pay interest @ 18% p.a... to party of the first part on the amount outstanding viz; Rs.22,96,756.73/-, but the party of the second part shall pay the interest @18% p.a. on the abovesaid amount only w.e.f. the date of filing of the suit i.e. 25.3.2006 onwards till date of realization.

(iii) That the party of the second part admits having executed an agreement dated 28.3.2003 and confirm the contents thereof admitting party of the second part's

liability to pay the above said amount through Shri Dharam Pal and of handing over the vacant possession of a shop of party of the second part bearing private no.6 (ground floor) bearing khana shumeri no.917/1-19, Subhash Marmet, Bazaar Harcharan Dass Amritsar. Party of the second part also admits and confirms having executed a separate, formal Rent Note regarding the shop above said through Shri Dharam Pal in favour of Dhawan sons HUF through Shri Satish Kumar.

(iv) That party of the second part has agreed and undertakes that party of the first part shall have all the rights to let out the shop to any other tenant, give possession to him and receives 'Pagri' from him exclusively which amount of pagri shall be adjusted towards the repayment of outstanding amount due from party of the second part to party of the first part abovesaid, party of the second part undertakes to give all assistance and cooperation in this to the party to the first part. If this effect does not succeed, party of the first part shall continue to possess the shop abovesaid as tenant on the terms agreed.

(v) That besides the above shop, in order to repay the amount outstanding. Party of the second part also agrees and undertakes to transfer shop no.7 of Shri Dharam Pal son of Shri Rama Mal situated in Bazaar Harcharan Dass Amritsar, 15ft. 3 inches long and 8ft,2 inches broad with a total area of 14 sq. yds. bound on the Eastern side by Haveli, on the Western side by road, on the Northern side by property of Smt. Nirmal Kumari and on the Southern side by shop/property no.6, to party of the first part, by way of sale deed at the prevailing market price.

(vi) That thereafter, still if there remains some balance to be paid, out of the amount abovesaid with interest party of the first part shall have all the rights to recover that balance amount by executing the decree against all or any of the constituent members of party of the second part.

(vii) The parties undertake to remain bound by the terms of the compromise.

(viii) That parties have no objection if the suit is decreed in terms of this compromise.”

3. It has come on record that the judgment debtors paid Rs.14,65,000/- in installments to the petitioners (decree holders) between period 21.12.2006 to 20.03.2007. It is the stand of the respondents that the

amount has been paid as one shop was handed over to the decree holders, who has rented out the shop in favour of Sh. Gulshan Singh by receiving hefty amount.

4. It has come on record that Smt. Vijay Rani widow of late Sh. Satish Kumar appeared as AW-1 and admitted that her husband has received Rs.17,00,000/- from Sh. Gulshan Singh. She identified her husband's signature on Ex.OX.

5. The learned counsel representing the petitioners contends that the admission of Smt. Vijay Rani is a result of misreading. He submits that the entire statement of Smt. Vijay Rani was required to be considered and she was not sufficiently exposed to the words.

6. This Court has considered the submissions of the learned counsel representing the parties.

7. Smt. Vijay Rani while appearing in evidence has stated that she is a businesswomen, who has been actively taking part in conducting the business along with her husband. He has specifically admitted the receipt of Rs.17,00,000/- from Sh. Gulshan Singh while identifying her husband's signature. Thus, her admission is categoric. In two different and independent sentences, she has admitted not only the receipt of Rs.17,00,000/- but also accepted that her husband appended signature on Ex.OX.

8. The Executing Court on appreciation of evidence has recorded a finding of fact. In exercise of revisional jurisdiction, this Court in absence of perversity is not expected to interfere in the findings of fact.

9. Keeping in view the aforesaid facts, no ground to interfere is made out.

10. Dismissed accordingly.
11. All the pending miscellaneous applications, if any, are also disposed of.

February 12th, 2024
Ay

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No