

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

116

CR No. 1294 of 2019

Date of Decision: 25.04.2024

Dev Raj and another

.....Petitioners

Versus

Brijpal and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**Present:** Mr. Sanjay Vij, Advocate for the petitioners.

Mr. Amit Jain, Advocate for respondent No.1.

Mr. Vishal Garg, Advocate for respondent No. 2.

ANIL KSHETARPAL, J.(ORAL)

1. In this revision petition, the challenge is to the correctness of order passed by the First Appellate Court while dismissing the appeal filed by the respondent as withdrawn with liberty to file suit on the same cause of action within a period of 30 days of the order.

2. The appeal was filed by the respondent to challenge the correctness of order passed by the Executing Court. The civil suit filed by Sh. Hari Singh and Sh. Joginder against Sh. Narain Singh was decreed on 05.12.1990. In Execution Petition, compromise was arrived at and the execution petition was disposed of on 28.02.2014. Subsequently the respondent filed an application on 31.08.2010 to set aside compromise decree in the Executing Court, which was dismissed.

3. The first appeal was filed against the aforesaid order passed by the Executing Court. In such situation, there was no occasion for the Court

4. Learned counsel representing the respondent submits that the respondent was not party to the compromise and therefore the same is not binding on it.
5. Be that as it may.
6. The respondent never filed any application under Order XXIII Rule 1 of the Code of Civil Procedure, 1908, in a pending suit. The suit was decreed on 05.12.1990. The execution petition was also disposed of in the year 2014. The respondent subsequently filed an application, which was dismissed by the Executing Court. It was not appropriate for the First Appellate Court to grant permission to the respondent to file the fresh suit on the same cause of action in an appeal filed by the respondent against the order passed by the Executing Court.
7. Disposed of.
8. All the pending miscellaneous application, if any, shall also stand disposed of.

25.04.2024

Rajeev (rvs)

(ANIL KSHETARPAL)

JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No