

In the High Court of Punjab and Haryana, at Chandigarh**Civil Revision No. 6094 of 2022****Date of Decision: 19.03.2024**

Mahender Singh

... Petitioner(s)

Versus

Surender Singh and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.Present: Mr. Ajay Ghangas, Advocate
for the petitioner(s).Mr. Chanderhas Yadav, Advocate
for respondent No.1.**Anil Kshetarpal, J.**

1. While issuing notice of motion, the following order was passed:-

“Learned counsel representing the petitioner inter alia contends that the Executing Court has dismissed petitioner’s objection petition without granting him an opportunity to prove the subsequent agreement dated 05.10.2018 entered between the parties, which nullifies the effect of the decree.

Notice of motion for 23.01.2023.

Process dasti only.

The petitioner shall have the liberty to serve the respondent through his counsel in the Executing Court.

In the meantime, the Executing Court is requested to not

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proceed further in the execution petition.”

2. The learned counsel representing the parties have, once again, been heard at length. The petitioner herein is the judgment debtor in a suit for specific performance of the agreement to sell which was decreed on 24.02.2016 which was upheld in the first appeal on 17.08.2018. When the decree holder filed the execution petition, the petitioner (judgment debtor) filed the objection petition claiming that the parties have mutually settled the matter by a deed of settlement executed on 05.10.2018 and the decree holder has been paid ₹4,00,000/- which is the amount equivalent to double of the earnest money and the decree holder has cancelled the agreement to sell.

3. The Executing Court has dismissed the petition without permitting the petitioner to prove the aforesaid deed of settlement on the following grounds:-

- i) The regular second appeal filed by the Judgment Debtor is pending in the High Court and he should file an application in the said appeal which is pending.
- ii) There is no reference to the judgment and decree passed by the Court in the deed of settlement.
- iii) The settlement outside the Court is not permissible.
- iv) Only a photocopy of the deed of settlement has been produced.

4. Heard the learned counsel representing the parties at length and with their able assistance, perused the paper-book.

5. The learned counsel representing the petitioner while reiterating the contentions as noticed in the order dated 21.12.2022 prays for setting

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aside the order passed by the Executing Court.

6. Per contra, the learned counsel representing respondent No.1 relies upon the judgment of the Supreme Court in *Padma Ben Banushali and Another v. Yogendra Rathore and Others (2006) 12 SCC 138* to contend that the adjustment not certified shall not be recognized by the Executing Court.

7. This Court has considered the submissions made by the learned counsel representing the parties.

8. It shall be noted here that the suit property which has been decreed and the land specified in the deed of settlement is the same. There is no dispute between the parties on this aspect of the matter. On a careful reading of the deed of settlement, it is evident that there is a reference to the agreement to sell under which the judgment debtor was paid the earnest money of ₹2,00,000/-. It is specifically recited that the decree holder has received ₹4,00,000/- i.e. the amount equivalent to the double of the earnest money and the agreement to sell stands cancelled. Thus, there are allegations of novation or substitution of the contract between the parties. The decree for specific performance of the agreement to sell ensures enforcement of the contract which can be modified, cancelled or substituted as provided under Section 56 of the Indian Contract Act, 1872. Moreover, at this stage, the petitioner is required to be given an opportunity to prove the deed of settlement. The Executing Court erred in refusing to cull out the issue and permit the parties to lead evidence to prove that fact. Similar pendency of the regular second appeal would have no impact on the validity

of the aforesaid settlement. Though there is no reference to the judgment

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and decree, however, it is evident that there is a reference made to the agreement to sell in the deed of settlement.

9. This Court has carefully read the judgment passed in *Padma Ben Banushali's (supra)*. That was the case of settlement between the landlord and tenant. In the opinion of the Court, the aforesaid aspect can be examined by the Executing Court only after the parties are granted an opportunity to prove the subsequent settlement.

10. Keeping in view the aforesaid discussion, the present revision petition is allowed. The impugned order dated 01.12.2022 is set aside. The Trial Court is directed to identify the issues which require adjudication and permit the parties to lead evidence. Thereafter, the Executing Court shall proceed to decide the matter.

(Anil Kshetarpal)
Judge

March 19, 2024
“DK”

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