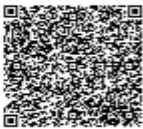


2026:PHHC:082888



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-3524-2026 (O&M)

Huma MirzaPetitioner..

vs.

SavitaRespondent.

1	<i>The date when the judgment was reserved</i>	<i>28.04.2026</i>
2	<i>The date when the judgment is pronounced</i>	<i>26.05.2026</i>
3	<i>The date when the judgment is uploaded on the website</i>	<i>26.05.2026</i>
4	<i>Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced</i>	<i>Full</i>
5	<i>The delay, if any, of the pronouncement of full judgment, and reasons thereof.</i>	<i>Not applicable</i>

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Divanshu Jain, Advocate with
Mr. Abhinav Goel, Advocate,
for the petitioner.

HARKESH MANUJA J. (Oral)

1. By way of present revision petition, challenge has been laid to an order dated 16.04.2026 passed by the learned Civil Judge, Junior Division, Gurugram-cum-Executing Court, whereby the objections preferred at the instance of petitioner-tenant, were dismissed.
2. Briefly stating, with respect to a tenanted premises i.e. Flat No.206, 2nd Floor in the Celebrity Suits, Palam Vihar, Gurgaon (now Gurugram) the respondent-landlady filed an eviction petition on the ground

of non-payment of rent while stating that the demised premises was leased out in favour of the petitioner on 10.03.2009 for a period w.e.f. 10.03.2009 to 09.02.2010 on monthly rent of Rs.11,000/-. Upon notice, the petitioner-tenant appeared. On 19.02.2014, the provisional assessment of rent was made by the learned Rent Controller and the eviction petition was adjourned for 06.03.2014. Later, on account of rent been not tendered by the petitioner-tenant, the proceedings were adjourned to 12.03.2014, however, the petitioner again failed to tender the provisional rent assessed by the learned Rent Controller. Resultantly, an order of eviction was passed against him in terms of Ist proviso to Section 13(2)(i) on 12.03.2014.

3. Aggrieved of the order of eviction passed by the learned Rent Controller on 12.03.2014, the petitioner-tenant preferred First Appeal, however, the same came to be dismissed vide order dated 24.04.2014 passed by the learned Appellate Authority, Gurgaon. Still aggrieved, the petitioner-tenant approached this Court by way of filing Civil Revision No.3507-2014, titled as “Huma Mirza vs. Savita”, which came to be dismissed vide order dated 09.10.2025 and the said order was even upheld by the Hon’ble Apex Court vide decision dated 12.01.2026 passed in SLP (C) No.313 of 2026.

4. In view of the above, the respondent-landlady proceeded to pursue her pending execution application. The petitioner-tenant preferred her objections to the execution application primarily on the ground that the demised premises was less than 10 years old on the date of filing of execution petition i.e. on 11.10.2013 and thus, the provision of **Section 1 (3)** of the Haryana Urban (Control of Rent & Eviction) Act, 1973 (for short, “1973 Act”) was not applicable, which was opposed at the instance of respondent-landlady, however, the said objections were dismissed by the

learned Executing Court vide its order dated 16.04.2026.

5. Impugning the aforementioned order, learned counsel for the petitioner-tenant submits that the occupation certificate with respect to the demised premises was issued by the concerned authorities on 13.09.2004, whereas, the eviction petition was preferred on 11.10.2013, which was clearly before the expiry of 10 years and thus, in terms of Section 1(3) of 1973 Act, the provisions of the 1973 Act were not applicable to the demised premises, as such, the learned Rent Controller had no jurisdiction to entertain and decide the eviction petition preferred by the respondent-landlady. He thus, contends that the order passed against the petitioner in terms of provisions of 1973 Act was wholly without jurisdiction.

5.1 Relying upon the decisions rendered by the Hon'ble Supreme Court in "*Cantonment Board and another vs. Church of North India*", reported as *2011 AIR Supreme Court 2339* and "*Harshad Chiman Lal Modi vs. DLF Universal and another*", reported as *2005 AIR Supreme Court 4446*", learned counsel emphasis that the plea of lack of jurisdiction being basic and fundamental to the validity of any order thus can be raised even in execution or in collateral proceedings. He thus, contends that the learned Executing Court failed to exercise its jurisdiction to entertain the plea of lack of jurisdiction raised by the petitioner, as such, the impugned order was liable to be set aside.

Relevant para 13 from *Cantonment Board's case (supra)* is reproduced hereunder:-

"13. As far as, the second submission of Mr. Singla is concerned, it is submitted by him that the Cantonment Boards were covered under the Public Premises Act only with effect from

1.6.1994 by an amendment introducing sub-section (viii) in Section 2(e)(2) of the Public Premises Act. He has, therefore, contended that the Estate Officer had no jurisdiction to pass eviction order on 26.6.1991 and hence, on this ground alone, the present appeal must be dismissed. As far as this submission of Mr. Singla is concerned, Mr. Venkaramani submitted that this objection ought to have been raised at the earliest opportunity so that appellant could have met the same earlier. It is undoubtedly true that objection to the maintainability of a proceeding must be raised at the earliest but an objection that the authority did not have the jurisdiction to entertain the proceedings over the subject-matter goes to the root of the proceeding. In a number of judgments, this Court has held that a defect, with respect to the lack of inherent jurisdiction is basic and fundamental and validity of such an order can be challenged at any stage, even in execution or in collateral proceedings (for reference see a judgment of a bench of three judges of this Court in Balwant N. Viswamitra and others v. Yadav Sa dashiv Mule (dead) through Lrs. [reported in (2004) 8 SCC 706] .”

Relevant para 27 from ***Harshad Chiman Lal Modi’s case (supra)*** is reproduced hereunder:-

“27 We are unable to uphold the contention. The jurisdiction of a court may be classified into several categories. The important categories are (i) Territorial or local jurisdiction; (ii) Pecuniary jurisdiction; and (iii) Jurisdiction over the subject matter. So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. Jurisdiction as to subject matter, however, is totally distinct and stands on a different footing.

Where a court has no jurisdiction over the subject matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is nullity.”

5.2 Learned counsel also contends that though the learned Executing Court recorded that the issue in the case in hand was a mixed question of law and fact requiring evidence, however, it failed to afford any opportunity to the petitioner to lead her evidence in support, thus, on this ground alone, the impugned order is liable to be set aside. No other argument has been addressed.

DISCUSSION AND REASONING

6. I have heard learned counsel for the petitioner and perused the paper-book. I am unable to find substance in the contentions raised on behalf of the petitioner.

7. Insofar as the dispute in the present case is concerned, reference is required to be made to Section 1(3) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 which is reproduced hereunder:

“3) Nothing in this Act shall apply to any building the construction of which is completed on or after the commencement of this Act for a period of ten years from the date of its completion”

A bare perusal of the aforesaid provision makes it clear that for the purpose of application of the 1973 Act, the statutory period of ten years is to be reckoned specifically from the date of completion of construction of the building.

8. In the present case, the petitioner failed to raise any specific

plea in the written statement filed in response to the eviction petition regarding the inapplicability of the 1973 Act on account of the building not having completed the statutory period of ten years under Section 1(3) thereof. Furthermore, no evidence whatsoever was led to establish the date of completion of construction of the building. The petitioner neither sought framing of any issue on the said aspect nor raised or pressed such contention during the course of adjudication before the learned Rent Controller or the Appellate Authority. Even before the Hon'ble Apex Court, no such plea was ever urged. Significantly, the objection regarding the alleged non-applicability of the Act came to be raised for the first time only during execution proceedings.

8.1 However, a distinction, must be drawn between a case where lack of jurisdiction is apparent on the face of the record and one where jurisdiction depends upon adjudication of disputed foundational facts. While a pure jurisdictional issue which is apparent on the face of record may be examined even at the stage of execution, an objection requiring evidentiary determination cannot be entertained in collateral or execution proceedings. In the case at hand, the plea regarding non-applicability of the 1973 Act on account of the building not having completed the statutory period of ten years was not discernible from the face of the record but constituted a mixed question of fact and law requiring adjudication on evidence, particularly regarding the date of completion of construction. Such an exercise could only have been undertaken during the original eviction proceedings before the learned Rent Controller and not at the stage of execution.

8.2 In this regard, it would be apposite to refer to the judgment rendered by the Hon'ble Supreme Court in the case of *Vasudev Dhanjibhai*

Modi v. Rajabhai Abdul Rehman and Others reported as ***1970(1)SCC670*** wherein a three-Judge Bench of the Hon'ble Apex Court observed that an Executing Court cannot go behind the decree or examine its correctness on facts or in law. An objection to jurisdiction can be entertained in execution only when the lack of jurisdiction is apparent on the face of the record; however, where determination of jurisdiction requires inquiry into disputed facts or evidence, such objection cannot be raised in execution proceedings and the decree remains executable unless set aside in appropriate proceedings. Relevant paragraphs thereof are reproduced hereunder:

“6. A Court executing a decree cannot go behind the decree between the parties or their representatives it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties.

7. When a decree which is a nullity, for instance, where it is passed without bringing the legal representatives on the record of a person who was dead at the date of the decree, or against a ruling prince without a certificate, is sought to be executed an objection in that behalf may be raised in a proceeding for execution. Again, when the decree is made by a Court which has no inherent jurisdiction to make it, objection as to its validity may be raised in an execution proceeding if the objection appears on the face of the record : where the objection as to the jurisdiction of the Court to pass the decree does not appear on the face of the record and requires examination of the questions raised and decided at the trial or which could have been but have not been raised, the executing Court will have no jurisdiction to entertain an objection as to the validity of the decree even on the ground of absence of jurisdiction. In Jananendra Mohan Bhaduri & Anr. v. Rabindra Nath Chakravarti, LR 60 IA 71 the Judicial Committee held that where a decree was passed upon an award made under the provisions of the Indian Arbitration Act, 1899, an objection in the course of the execution proceeding that the decree was made without jurisdiction, since under the Indian Arbitration Act, 1899, there is no provision for making a decree upon an award, was competent. That was a case in which the decree was on the face of the record without jurisdiction.

8. *In the present case the question whether the Court of Small Causes had jurisdiction to entertain the suit against Munshi depended upon the interpretation of the terms of the agreement of lease, and the user to which the land was put at the date of the grant of the lease. These questions cannot be permitted to be raised in an execution proceeding so as to displace the jurisdiction of the Court which passed the decree. If the decree is on the face of the record without jurisdiction and the question does not relate to the territorial jurisdiction or under section 11 of the Suits Valuation Act, objection to the jurisdiction of the Court to make the decree may be raised; where it is necessary to investigate facts in order to determine whether the Court which had passed the decree had no jurisdiction to entertain and try the suit, the objection cannot be raised in the execution proceeding.*

9. *The High Court was of the view that where there is lack of inherent jurisdiction in the Court which passed the decree, the executing Court must refuse to execute it on the ground that the decree is a nullity. But, in our judgment, for the purpose of determining whether the Court which passed the decree had jurisdiction to try the suit, it is necessary to determine facts on the decision of which the question depends', and the objection does not appear on the face of the record, the executing Court cannot enter upon and enquiry into those facts. In the view of the High Court since the land leased was at the date of the lease used for agricultural purposes and that it so appeared on investigation of the terms of the lease and other relevant evidence, it was open to the Court to hold that the decree was without jurisdiction and on that account a nullity. The view taken by the High Court, in our judgment, cannot be sustained."*

(Emphasis supplied)

9. In view of the above discussed legal position, the contention raised on behalf of the petitioner by relying upon the law laid down in the *Cantonment Board's case (supra)* and *Harshad Chiman Lal Modi's case (supra)* does not hold merit. The said judgments reiterate the settled legal fundamental principle that the objection as to lack of subject matter jurisdiction goes to the roots of the case and thus may be raised at any stage of the proceedings. However, the foundational requirement for invoking

such a principle is the establishment of lack of jurisdiction itself which in the present case was not made out from the facts and material available on record and instead required adjudication in the course of the eviction proceedings.

9.1 In the present matter, the petitioner has failed to establish that the ld. Rent Controller inherently lacked jurisdiction to entertain the eviction petition. The petitioner's plea rests on the assertion that the building had not completed the statutory period of ten years under Section 1(3) of the 1973 Act, and, consequently, the provisions of the Rent Act were inapplicable. However, no material has been ever placed on record to establish the actual date of completion. Thus, the issue in the case at hand, not being apparent on the face of the record required adjudication on evidence. Therefore, in view of the law laid down in the case of *Vasudev Dhanjibhai Modi (supra)*, ld. Executing Court committed no error in declining to entertain the objection raised by the petitioner and dismissing the same.

10. Even otherwise, Section 47 of the Civil Procedure Code, 1908 which deals with the questions that can be gone into by the Executing Court contemplates adjudication of a limited category of issues pertaining to execution, discharge or satisfaction of the decree and is intended to obviate multiplicity of proceedings. The provision does not envisage a re-adjudication of issues which either stood concluded in the original proceedings or which could and ought to have been raised at the appropriate stage. The aforesaid principle has been reiterated in the case of *Rahul S. Shah v. Jinendra Kumar Gandhi and Others reported as 2021(2) RCR(Civil) 854* wherein the Hon'ble Supreme Court also highlighted the

abuse of process of law by judgment- debtor by filing objections before the Executing Court thereby depriving decree holders of the fruits of the decree despite succeeding in litigation. Relevant paragraphs of the said judgment are reproduced hereunder:

“24. In respect of execution of a decree, section [47](#) of CPC contemplates adjudication of limited nature of issues relating to execution i.e., discharge or satisfaction of the decree and is aligned with the consequential provisions of Order 21. Section 47 is intended to prevent multiplicity of suits. It simply lays down the procedure and the form whereby the court reaches a decision. For the applicability of the section, two essential requisites have to be kept in mind. Firstly, the question must be the one arising between the parties and secondly, the dispute relates to the execution, discharge or satisfaction of the decree. Thus, the objective of Section 47 is to prevent unwanted litigation and dispose of all objections as expeditiously as possible.

25. These provisions contemplate that for execution of decrees, Executing Court must not go beyond the decree. However, there is steady rise of proceedings akin to a re-trial at the time of execution causing failure of realisation of fruits of decree and relief which the party seeks from the courts despite there being a decree in their favour. Experience has shown that various objections are filed before the Executing Court and the decree holder is deprived of the fruits of the litigation and the judgment debtor, in abuse of process of law, is allowed to benefit from the subject matter which he is otherwise not entitled to.

42. All Courts dealing with suits and execution proceedings shall mandatorily follow the below-mentioned directions:

.....

10. The Court exercising jurisdiction under Section 47 or under Order 21 of CPC, must not issue notice on an application of third-party claiming rights in a mechanical manner. Further, the Court should refrain from entertaining any such application(s) that has already been considered by the Court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.”

11. Furthermore, Explanation IV to Section 11 of the 1908 Act envisages the doctrine of constructive *res judicata*. It provides

“Any matter which might and ought to have been made ground of

defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.”

The underlying principle behind this doctrine is often expressed through the maxim ***Interest reipublicae ut sit finis litium*** which means *it is in the interest of the State that litigation must come to an end*. The doctrine is intended to prevent abuse of the judicial process by requiring parties to raise all available pleas at the appropriate stage thereby securing effective enforcement of judicial decisions. The principle of *res judicata* has also been consistently interpreted by Courts to apply not only to subsequent independent proceedings but equally to different stages of the same proceedings.

11.1 In this regard, reference may be made to the judgment of the Hon’ble Supreme Court in ***Y.B. Patil and others versus Y.L. Patil***, reported as **(1976) 4 SCC 66**, wherein it was observed as under:

“4. It is well settled that principles of res judicata can be invoked not only in separate subsequent proceedings, they also get attracted in subsequent stage of the same proceedings, Once an order made in the course of a proceeding becomes final, it would be binding at the subsequent stage of that proceeding.....”

12. In the present case, the petitioner-tenant had sufficient opportunities to raise the objection which is now sought to be agitated. Such plea could very well have been raised before the learned Rent Controller, the Appellate Authority, this Court in revision, and even before the Hon’ble Supreme Court in the Special Leave Petition preferred by the petitioner. However, despite the availability of such opportunities, the petitioner failed to raise the same at the appropriate stage. At this juncture, permitting the petitioner to raise the said objection in execution proceedings would defeat the very

object underlying Explanation IV to Section 11 CPC. Once a plea was available and ought to have been raised in the earlier proceedings, the same cannot be permitted to be reagitated at the stage of execution. In view of the law laid down in *Y.B. Patil's case (supra)*, the objection sought to be raised by the petitioner is clearly barred and cannot be entertained at this stage, particularly when the effect thereof would only be to unnecessarily prolong the litigation despite the decree having already attained finality even by the Hon'ble Apex Court.

13. Thus, in view of the above-discussed factual and legal position, the objection sought to be raised in the present case, being dependent upon adjudication of factual matrix, the petitioner having failed to raise the same at the appropriate stage owing to lack of due diligence on his part, the Id. Executing Court rightly refrained from travelling beyond the decree while dismissing the objection.

14. Henceforth, finding no illegality or perversity in the impugned order, the same is upheld and the present revision petition is accordingly dismissed.

15. Pending miscellaneous application(s), if any, shall also stand disposed of.

26.05.2026
sonika

(HARKESH MANUJA)
JUDGE

(i) Whether reasoned/speaking?	Yes/No
(ii) Whether reportable?	Yes/No