

IN THE HIGH COURT OF HIMACHAL PRADESH  
SHIMLA

Civil Revision No. 135 of 2005.

Date of Decision: 25<sup>th</sup> April, 2006.

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Khazana Ram. . . . . Petitioner

Versus

Nand Lal and another. . . . . Respondents

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*Coram*

The Hon'ble Mr. Justice V.K. Gupta, C.J.

Whether approved for reporting<sup>1</sup>?

For the Petitioner: Mr. N.K. Thakur, Advocate.

For the respondent: Mr. J.R. Poswal, Advocate,  
for respondent No.1.

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V.K. Gupta, C.J. (Oral).

In this petition filed under Section 115 of the Code of Civil Procedure read with Article 227 of the Constitution of India, the petitioner has challenged the correctness and validity of the order dated 14<sup>th</sup> September, 2005 passed by the learned Civil Judge (Senior Division), Bilaspur in Execution Petition No.1/10 of 2005. The facts giving rise to the filing of this

petition are very peculiar and interesting and need to be noticed carefully.

A suit for declaration and permanent prohibitory injunction was filed by respondent No.1, Nand Lal against the petitioner Khazana Ram as well as respondent No.2 Joginder Singh on the ground that the plaintiff was a co-sharer along with the aforesaid two defendants of some property and that he being co-sharer to the extent of 1/3<sup>rd</sup> was entitled to receive compensation from Kol Dam authorities on account of acquisition of the land by them. In this suit, the petitioner in his capacity as defendant No.1 and respondent No.2 Joginder Singh in his capacity as defendant No.2 had engaged counsel by executing separate powers of attorney in favour of the counsel even though both of them had filed a joint written statement which was signed by the counsel Shri O.P. Gautam on the basis of the aforesaid two powers of attorney executed in his favour by these two defendants. This

written statement was also signed by respondent No.2 as well as verified by him even though it was not signed by the petitioner. As the suit was pending disposal before the learned trial Court, an application came to be filed by the plaintiff Nand Lal on 9<sup>th</sup> September, 2004. This application was signed by him alone. In this application he stated that the "defendant" had agreed to pay the amount of compensation of the share of the applicant-plaintiff to him and, therefore, the plaintiff did not want to proceed further in the suit. For ready reference, the text of the application is reproduced hereunder, which reads thus:-

"The applicant/plaintiff submits as under:-

1. That the above titled suit is pending before this ld. Court and is fixed for 29.10.2004.
2. That the defendant has agreed to pay the amount of compensation of the share of the applicant to him, therefore, the applicant does not

want to proceed further with the aforesaid suit.

3. That since the respondent/defendant has agreed to make the payment of the compensation to the applicant of his share as such the said case/suit deserves to be taken up today for withdrawal."

This application was taken up by the learned trial Court on 10<sup>th</sup> September, 2004. On that date, the following order was passed:-

"At this stage, it is submitted that the parties have compromised the case. The separate statement of the plaintiff Shri Nand Lal has been recorded. He has stated that he has compromised the case with the defendants No.1 and 2 vide compromise deed Ex.PA and, therefore, does not want to pursue this suit against the defendants. The statement of the plaintiff has been endorsed by defendant No.2 Shri Joginder Singh on his own behalf and on behalf of his father defendant No.1, being his power of attorney. In view of the statements of the parties, the

suit of the plaintiff stands compromised and the same is accordingly dismissed as withdrawn. File after due completion be consigned to record room."

It is interesting and note worthy to mention here that petitioner-defendant No.1 was unaware of the aforesaid application or the passing of the aforesaid order because neither he appeared in the trial Court on 10<sup>th</sup> September, 2004 personally nor did his counsel Shri O.P. Gautam had appeared. It is thus very apparently clear that perhaps an unholy alliance or an unholy nexus might have been entered into between the plaintiff Nand Lal and respondent No.2 Joginder Singh (defendant No.2 in the suit) because apparently Joginder Singh signed the so called compromise deed styling himself as the power of attorney holder of the petitioner Khazana Ram. Even the trial court apparently acted callously and carelessly in taking note of the statement of defendant No.2 made for himself and

allegedly on behalf of defendant No.1 Khazana Ram and also by making a mention in the order dated 10<sup>th</sup> September, 2004 of some power of attorney being held by respondent No.2 Joginder Singh for and on behalf of the petitioner Khazana Ram. The fact is that no power of attorney was either ever executed by the petitioner in favour of respondent No.2 nor was any ever filed in the Court by respondent No.2. No such document actually is in existence. It thus appeared that the plaintiff Nand Lal based on this unholy alliance got the suit withdrawn by holding out, incorrectly and illegally that it had been compromised between himself and the defendants even though in the application dated 9<sup>th</sup> September, 2004, the expression "defendant" singularly was used whereas there was admittedly more than one defendant in the suit.

Be that as it may, the learned trial Court vide the aforesaid impugned order dismissed the suit as withdrawn. It did not

decree the suit as having been compromised. No decree sheet accordingly was ordered to be drawn up. Since the suit was dismissed as withdrawn, there was no question of any decree having been passed in favour of the plaintiff and hence there cannot be any question of any such decree being put to execution. Apart from the fact that the aforesaid judgment dated 10<sup>th</sup> September, 2004, whatever its worth or whatever its consequence may be, was not binding upon the petitioner Khazana Ram in any manner whatsoever and could not be said to be operative qua or against him, there was no question of any execution being put into motion for executing any decree because no decree was passed; none could be passed at all since the suit had been dismissed as withdrawn.

In the light of the aforesaid facts, Mr. J.R. Poswal, learned counsel appearing for respondent No.1 Nand Lal seeks leave of this Court to withdraw the aforesaid execution application but because of the

aforesaid adverse comments having been made by me about the validity of the order dated 10<sup>th</sup> September, 2004 passed by the learned trial Court, he also seeks liberty of this Court to file an appropriate application before the trial Court for the restoration of the disposed of suit along with an appropriate application for condonation of delay for filing such a restoration application.

Based on the aforesaid statement of Mr. Poswal, the execution application being Execution Petition No.1/10 of 2005 pending in the Court of learned Civil Judge (Senior Division), Bilaspur is hereby dismissed as withdrawn. Because of the dismissal of the aforesaid Execution Petition, the impugned order dated 14<sup>th</sup> September, 2005 under challenge in this petition becomes nonest in the eyes of law and is also rendered otiose. Consequently the present petition, being Civil Revision No.135 of 2005 is disposed of as having become infructuous. Liberty is given to respondent No.1 Nand Lal for



applying to the trial Court for restoration of Civil Suit No. 3/I of 2003 along with an application for condonation of delay for making such an application. The learned trial Court is directed to consider and dispose of the said two prayers of respondent No.1 on their merits and in accordance with law.

Records be sent back to the Courts below. The parties to bear their own costs.

CMP No.171 of 2005.

In view of the disposal of the revision petition, this application is disposed of. Interim order dated 21<sup>st</sup> October, 2005 shall stand vacated.

25<sup>th</sup> April, 2006.  
(tr)

(V.K. Gupta), C.J.