

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

C. Rev. No. 5/2012
CMP No. 4/2012

Date of decision: 25.04.2012

Baldev Singh Vs. Jagdev Singh and ors.

Coram:

MR. JUSTICE J. P. SINGH.

Appearing Counsel:

For the Petitioner(s) : Mr. Varinder Bhat, Advocate.
For the Respondent(s) : Mr. Ajay Kumar Gandotra, Advocate.

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| i) | Whether approved for reporting
in Press/Media | : | Yes |
| ii) | Whether to be reported
in Digest/Journal | : | Yes |
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Judgment:

Respondent No.1's Civil Original Suit for Partition of House No.224-225 situated at Rehari Colony, Jammu, by metes and bounds, was decreed by the Principal District Judge, Jammu on 22.10.2011 pursuant to the Compromise that the parties to the Suit entered into during the course of Mediation Proceedings where they were sent by the Court on their request, to explore the possibility of *inter se* settlement. The order that was passed by the Court decreeing the respondent's Suit, reads thus:-

"Counsel for the parties present. Parties are also present. Parties along with their counsel appeared in the court and have put in a composition deed whereby the defendant no.4 in whose possession the suit house is, has agreed to accept Rs.20.00 lacs(rupees twenty lacs) which shall be borne by the plaintiff as well as the other

defendants in equal shares. The contents of the composition deed were read over and explained to the executants who have admitted to be true and correct.

Rs.20.00 lacs shall be deposited in this court within a span of thirty (30) days. Thereafter the defendant no.4 will vacate the house within a span of thirty days. The defendant no.4 shall receive the payment from the court only after handing over the keys to the Nazir of this court. The keys of the house and possession thereafter shall be handed over to the plaintiff and other defendants. In view of the composition deed, the suit is hereby decreed. Office shall draw the decree sheet accordingly. No order as to costs.

The suit is, accordingly, disposed of and be consigned to records along with the ancillary applications. Interim direction, if any, shall stands vacated.

Announced.
22.10.2011

Sd/-
Principal District Judge
Jammu”

The Decree that was drawn pursuant to the above referred order of the Court reads as follows:-

“ In view of the composition deed, the suit is hereby decreed. No order as to cost.”

Announced
22.10.2011

Sd/-
Principal
District Judge
Jammu”

In terms of order dated 22.10.2011, the respondents deposited Rs.20 lac on 16.11.2011 in the Court. A Notice was thereafter issued to the petitioner to handover the keys of the house on or before 21.12.2011 to the Bailiff of the Court. The petitioner received the Notice on 1.12.2011 but would not hand over the keys of the house. The respondents thereafter took out execution proceedings which were objected to by the petitioner urging that Rs.20 lac having not been paid directly to him within one month, in terms of the

Compromise Deed, the Decree was incapable of execution. It was additionally pleaded by the petitioner that there being no provision in the Decree for its execution in the event of non-compliance of the terms of the Compromise, the Decree was incapable of execution.

Rejecting the Objections, the learned Principal District Judge directed the Nazir of the Court to take over the possession of the house and hand it over to the respondents providing for release of the deposited amount in favour of the petitioner after the delivery of the possession of the house, vide his order dated 7.1.2012.

Aggrieved by the District Judge's order, the petitioner has filed this Civil Revision seeking its setting aside.

I have considered the submissions of the learned counsel for the parties and perused the records.

The records of the trial Court reveal that the parties had settled their dispute in the Suit pursuant to a Compromise, in terms thereof the respondents were to pay Rs.20 lac to the petitioner within one month and after one month therefrom, the petitioner had to deliver the possession of the house to the respondents. The Composition Deed drawn by the parties was produced in the Court on the day it was so executed. The Court, however, appears to have changed the course suggested by the parties in the Compromise Deed insofar as the payment of Rs.20 lac and delivery of the possession of the house by the petitioner was concerned. To give effect to the Compromise entered into by the parties, the Court vide

its order dated 22.10.2011 directed the respondents to deposit the amount in the Court within thirty days and the petitioner had to receive the money from the Court only after handing over the keys to the Nazir of the Court who would thereafter hand over the possession of the house to the respondents.

The above course appears to have been adopted by the Court with the consent of the parties and their learned counsel, who were present in the Court when the order was passed. This is so because neither the parties had questioned the order passed by the Court nor any grievance therewith was raised even in this Court. However, the Decree Sheet that was drawn by the Court, did not contain the last portion of the order that the Court had passed while directing the Suit to be decreed and all that is indicated in the Decree is that in view of the Composition Deed, the Suit is hereby decreed.

The order passed by the learned Principal District Judge on 22.10.2011 in presence of the parties and their learned counsel having not been questioned by the parties, the petitioner's grievance against the order of the Executing Court directing delivery of the possession of the house, on the plea that the term of the Compromise Deed having not been complied with by the respondents in their omission to pay Rs.20 lac directly to him, he was not obliged to deliver the possession of the house to the respondents, is found untenable, in that, the deposit of Rs.20 lac by the respondents in the Court, which in terms of the Decree was required to be paid to the petitioner, is a valid deposit in accordance with

the Compromise entered into by the parties, and the decree of the Court, in terms of the provisions of Order XXI Rule 1 of the Code of Civil Procedure, whereunder the money payable under a Decree can validly be deposited by the decree holder in the Court. Order XXI Rule 1 is reproduced hereunder for reference:-

“1. Modes of paying money under decree

(1) All money, payable under a decree shall be paid as follows, namely:-

- (a) by deposit into the Court whose duty it is to execute the decree, or sent to that Court by postal money order or through a bank; or
- (b) out of Court, to the decree-holder by postal money order or through a bank or by any other mode wherein payment is evidenced in writing; or
- (c) otherwise, as the Court which made the decree, directs.

(2) Where any payment is made under clause (a) or clause(c) of sub-rule (1), the judgment-debtor shall give notice thereof to the decree-holder either through the Court or directly to him by registered post, acknowledgment due.”..

The Decree holders having thus complied with the terms of the Compromise Decree in paying Rs. 20 lac to the petitioner by depositing it in the Court, in terms of the provisions of Order XXI Rule 1 of the Code of Civil Procedure and in accordance with the mode devised vide order dated 22.10.2011, the petitioner was obliged to deliver the possession of the house to the respondents accepting the amount deposited by the respondents in the Court within the time stipulated in the Compromise Deed and the order of the Court.

This apart, the Decree in terms of Order XX Rule 6 of the Code of Civil Procedure had to agree with the terms of

the judgment/order of the Court and in this view of the matter the respondents' depositing Rs.20 lac in Court cannot be construed as decree holders' omission to pay Rs.20 lac to the petitioner in terms of the Compromise, for, the amount deposited by the respondents in the Court in terms of the order of the Court on the basis whereof the decree was passed, shall be deemed to have been paid to the petitioner-judgment debtor in terms of the decree.

The other contention of the petitioner's learned counsel that there being no term in the Decree providing for its execution on the failure of the judgment debtors to comply with the terms thereof too is found without merit because the order passed by the learned Principal District Judge on 22.10.2011 not only settles the dispute between the parties but also provides for the mode of payment and delivery of possession ensuring execution of the order and the decree in letter and spirit by providing a fool proof mechanism, with the consent of the parties, so as to advance the cause of justice, And in this view of the matter the Decree is, therefore, required to be construed for execution, in the light of the order passed in presence of the parties and their learned counsel. The Decree cannot be avoided for execution on the ground that there being no term in the Compromise providing for its execution in the event of the default of the parties in compliance thereof because the tone and tenor of the order of the Court on the basis whereof the Decree was passed expressly provides the course for the execution of the

Decree as well. I am supported in taking the above view by the law laid down by Hon'ble Supreme Court of India in *Parkash Chand Khurana v. Harnam Singh and others* reported as AIR 1973 Supreme Court 2065 where while dealing with the question, it was held as follows:-

“It is never a precondition of the executability of a decree that it must provide expressly that the party entitled to a relief under it must file an execution application for obtaining that relief. The tenor of the award shows that the arbitrator did not intend merely to declare the rights of the parties. It is a clear intendment of the award that if the appellants defaulted in discharging their obligations under the award, the respondents would be entitled to apply for and obtain possession of the property.”

For all what has been said above, there is no scope for interference with the order of the Executing Court which does not suffer from any error of law or jurisdiction.

This Civil Revision is, therefore, found without merit, hence dismissed with costs quantified at Rs. 5,000/-.

Records be sent back forthwith.

**(J. P. Singh)
Judge**

Jammu
25.04.2012
Vinod.