

(1998) 03 P&amp;H CK 0022

**High Court Of Punjab And Haryana At Chandigarh****Case No:** Civil Revision No. 608 of 1998

Dilbag Singh

APPELLANT

Vs

Chiranji Lal

RESPONDENT

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**Date of Decision:** March 12, 1998**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 115

**Citation:** (1998) 119 PLR 364 : (1998) 2 RCR(Civil) 634**Hon'ble Judges:** Swatanter Kumar, J**Bench:** Single Bench**Advocate:** Mani Ram, for the Appellant; Surinder Gandhi, for the Respondent

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**Judgement**

Swatanter Kumar, J.

This revision, arises out of an unfortunate litigation between the father and the son going on for years. Chiranji Lal, father of the judgment-debtor Dilbag Singh, had obtained a decree by filing an ejectment petition in February, 1988. The decree for ejectment was passed on 12.3.1992 against the judgment-debtor. On 22.3.1992 after the lapse of 5 years, the decree-holder filed an execution petition seeking warrant of possession in regard to the property in dispute which is stated to be one room and some adjacent area in possession of the judgment-debtor. Objections in the execution were filed by Dilbag Singh stating therein that decree dated 12.3.1992 stands satisfied and completely waived the stand substituted by a family Settlement executed between the decree-holder and the judgment debtor on December 18, 1992. On the strength of this family settlement, the judgment-debtor prayed for protection of his possession on the property in dispute. The plea of waiver/estoppel was also taken against the decree-holder. The learned trial court after hearing the parties but without recording any evidence by way of an affidavit or otherwise rejected the objections on the ground that executing Court has only to execute the decree as it stands and subsequent events would be irrelevant unless the decree rendered a nullity. It is this order of the learned executing Court dated 17.1.1998

which has been assailed in the present revision.

2. At the outset, the photocopy of the alleged family settlement dated 18.12.1992 was filed on record. It was also stated that the original of the settlement is in possession of the decree-holder. The photocopy of this document which has also been placed on the record of this petition shows that the family settlement was executed between the parties and it is signed by five witnesses of the village. Reference to the execution of this family settlement has been made in detail in para-2 of the objection petition dated 35.9.1997. In reply to para-2 of this objection petition, the decree holder though has disputed the contents but has clearly admitted that the papers were got signed from him by the judgment-debtor on a blank stamp paper. He also admits that the stamp paper was signed by him for the purpose of submitting it to the electricity Department as the defendant was user of a Chakki and Gandasa in the said room.

3. From these undisputed facts, it is clear that the document is signed by the decree-holder and the document also shows that it is witnessed by five persons. The provisions of the settlement provide that the judgment debtor shall pay a sum of Rs. 2,500/- per year to the father for a period of 5 years and would also contribute to the extent of 1/3 of the marriage expenses, which may be incurred by the father on the marriage of his sister and for this consideration the decree would be rendered ineffective and possession thereof would continue with the judgment-debtor. In default thereof, the decree holder had the right to take possession of the plot in furtherance to the decree. During the course of arguments, it was conceded before me that there is sister of the judgment-debtor who is still to be married. According to the judgment-debtor he had paid the sum of Rs. 2,500/- for the earlier year but had not received any receipt from his father in good faith and for the later two years as the dispute arose he had sent the amount of Rs. 2,500/- per year by Money order. I am unable to agree with the observations of the learned executing Court that the jurisdiction of the executing Court to comment upon a decree is only limited to the decree being a nullity and nothing more. It is a settled principle of law that executing Court can make a reference to pleadings and can clarify the terms of the decree in consonance with the decree. Another settled principle which is no more open to any question is that the executing court can always record satisfaction of a decree in any form. A decree only gives a right to a decree holder to execute the decree. The decree holder is free to waive the right arising from the decree and if such satisfaction of waiver is completed and prima facie is supported by documents and appears to be a bona fide question the executing court would have to look into such questions and determine the questions therefrom. The provisions of Order 21 of the CPC do postulate objections to be decided by the executing Court if raised either by judgment-debtor or even by a party other than the judgment debtor. The legislative intent to attach finality to such decision of the executing court is clear from the language of various provisions of order 21 which indicate that the separate suit in regard to such objections which can validly or properly be raised before the

executing court within its jurisdiction, would not lie in any other court. The learned executing Court did refer to the judgment cited by the objector in the cases of [Smt. Kalloo and Others Vs. Dhakadevi and Others](#), Page 262 [Golak Behari Biswal and Another Vs. Karunakar Rout](#),, stating that these cited cases are not helpful to the version of the judgment-debtor as these are based upon different footing; but did not comment as to how the principles enunciated in these cases are not applicable to the facts and circumstances of the present case.

4. At this stage, it may be relevant to make a reference to a decision of this Court where after detailed discussion it was held by the Court that the objections filed by the judgment debtor are bona fide, based upon proper documentation must be dealt with and disposed of in accordance with the provisions of Order 21. In some cases, it may be appropriate for the Court to dispose of the objections summarily and order accordingly but certainly in some other cases it may require determination upon giving opportunity even to lead evidence to the parties effected. The relevant observations in case of "Rocky Tyres and Ors. v. Ajit Jain and Ors. are :

"Thus the cardinal principle of law that follows is that the purpose of granting an opportunity to prove his case to an objector while entertaining objections u/s 47 read with Order 21 Rules 97 to 108 of the CPC does not amount to permission for abusing the process of law or court. The discretion must be exercised by the Court in such cases. Of course discretion is governed by settled judicial principles and must be exercised within four corners of law, but such a discretion cannot be termed as a mere routine exercise of judicial discretion. Either way it should be for well founded and settled principles governing the subject.

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No procedural law could achieve its basic need of expeditious disposal which has always been the legislative intent and more particularly the need of the day, if such, procedure is abused by the litigant. Due process of law can help in achieving ends of justice with the exception of it being abused by all concerned."

5. In the facts and circumstances of this case, at least it is very difficult for the court to hold that prima facie objections filed by the judgment-debtor are frivolous mala fides and amounts to abuse of process of law. The family settlement relates to correct facts existing in the family. It is witnessed by five witnesses and the decree holder who happens to be father of the judgment-debtor had every right to waive the rights accruing from the decree. Another fact which may be relevant is that the decree was obtained on 12.3.1992 but certainly it was not executed till the year 1997. For the proof of payment the judgment-debtor would have been able to establish his pleas especially when signatures on the documents which is witnessed by five other witnesses is admitted by the decree holder.

6. For the reasons aforesaid, the order dated 17.1.1998 is hereby set aside. Further the matter is remanded back to the learned executing Court to decide the objections of the judgment debtor after affording opportunity to the parties to prove their respective case in regard to satisfaction/waiver of decree on the basis of the family settlement. It would be for the learned executing court to decide whether evidence is allowed by way of affidavit or otherwise. It is, however, subject to the condition that the judgment-debtor shall deposit in court the total money, that is Rs. 2,500/- per year and would furnish security to the satisfaction of the learned executing court that he would bear 1/3 of the expected expenditure in the marriage of his sister. Depositing of money and furnishing of security shall be condition precedent to the entertainment of objections by the learned executing court. The needful be done by the judgment-debtor within one month from the date of this order. In the event of default, the objections filed by judgment-debtor shall stand dismissed and warrant of possession in execution proceedings shall be issued in accordance with the order dated 17.1.1998. This petition is disposed of without any order as to costs.