

## **M/s. Aggarwal Textile Traders, Cotton and Waste Merchants Vs The Hafed Spinning Mill**

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** Aug. 1, 2013

**Acts Referred:** Civil Procedure Code, 1908 (CPC) – Order 21 Rule 31(2)

**Citation:** (2013) 172 PLR 464

**Hon'ble Judges:** K. Kannan, J

**Bench:** Single Bench

**Advocate:** Sunil Panwar, for the Appellant;

**Final Decision:** Dismissed

### **Judgement**

K. Kannan, J.

The revision petition is against the order of the Executing Court directing the right to a decree holder to recover the value of

62 quintals of cotton which was secured under the decree for recovery against the judgment debtor. The suit for recovery of 62 quintals of cotton

was decreed and the decree also contained reference that if the cotton in quantity was not given the plaintiff will be entitled to damages therefor.

The execution petition was filed for recovery of the movables but it appears that the judgment debtor denied having the movables and therefore the

Court has passed the order stating that he would be entitled to the damages entitled to an amount equivalent to the market value of 62 quintals of

cotton. The Court has directed the decree holder to furnish the government purchase rate and market rate of cotton as prevailing and directed the

case to be brought up for hearing to a future date. The judgment debtor is in revision before this Court stating that if the goods in specie are not

available, the remedy lies only to file a fresh suit for damages and he cannot have the valuation determined at this time. According to him, the

executing court cannot go behind the decree and if the court had directed damages to be paid, it should only be understood that damages must be

recovered by the decree holder by means of separate suit. His further objection are that the value of the cotton shall be determined only as on the

date of institution of the suit and not the present market rate. He would further contend that the plaintiff has not paid appropriate court fee for the

damages and he cannot secure the decree therefor. The objections taken by the revision petitioners are all hopelessly vexatious. A suit for recovery

of movable in specie is perfectly tenable and if the defendant does not deliver up the movables, the executing court has power under Order 21

Rule 31(2) CPC to direct the arrest or attachment of the judgment debtor or determined value of the movable to be ascertained and provide for

execution thereof.

Where any attachment under sub-rule (1) has remained in force for (three months), if the judgment debtor has not obeyed the decree and the

decree-holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the

decree-holder, in cases where any amount has been fixed by the decree to be paid as an alternative to delivery of movable property such amount,

and, in other cases, such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.

2. This power of the Executing Court exists even without reference to the provision for damages in the decree. The provision for damages as

contained itself must be understood as a euphemism for the monetary equivalent value of the movable claimed in the suit for recovery. If the

execution petition is resisted by the judgment debtor contending that he does not have movables and cannot deliver up then the court need not

consign the execution petition as incompetent and direct the decree holder to file a fresh suit for damages. The argument urged by the counsel is

that this judgment itself must have been the subject of appeal by the decree holder is meaningless, for, as I have observed the decree providing for

damages was a surplusage, for, a decree for recovery of movables always has an inherent quality of securing to the decree holder the value

thereof, if the bailiff cannot find the movables in the custody of the defendant or when the judgment debtor himself makes the declaration that he

will not deliver up the movables. There could hardly be a contention here, if the judgment debtor joins issue with the plaintiff and satisfies the

decree by delivering up the movables, namely, 62 quintals of cotton for which a decree had been passed. The dispute arises now only because he

is not willing to do so and would defy the decree holder to file fresh suit. Such a defence is impermissible.

3. The point raised here came up directly for consideration in a decision before a Division Bench of the Madras High Court in A.G.

Venkatanarasiah Vs. Vijayalakshmi and Others, The Court held that there is an obligation cast upon the Court to mention the money value of the

movables, when it found either that the movables do not exist in specie or delivery of the movables is not possible for any reason. Even if it is not

done, as it has happened in this case, the decree holder is not without remedy. Compensation could be fixed by the executing court. In such an

event the decree holder need not be pinned down, even the statement of the value of movables as given in the plaint.

4. The argument that the executing court cannot go behind the decree is also without any substance, for, the executing court is bound under the

decree itself to ensure that the benefits of the decree for recovery of 62 quintals of cotton are realized to the decree holder from the judgment

debtor. It has every power to enforce the terms by seizure of goods that exist. In this case, the seizure is not possible in view of denial by the

defendant of his plea to produce the same. In such an event the obvious extension of the decree is to ensure the financial equivalent determined and

allow parties to join issues on the assessment as made by the decree holder and give opportunity for the judgment debtor to contest the value as

made by the decree holder for which evidence will be available for both the parties to give. The court in such an event only will adjudge on the

value of the movables at the time when the order is passed. It is therefore correct that the valuation must be the present value for it is the present

entitlement to the 62 quintals of cotton that the plaintiff could be concerned, as it was found in the Madras Division Bench decision referred to

above. The objection that even court fee was not properly paid is also meaningless. When a suit had been filed for recovery of 62 quintals of

cotton, the court should have normally calculated the value of the movable as on that date for the purpose of Court fee. If the court had failed to do

so and had allowed for a decree to be drafted it cannot avail to the defendant to contend that the decree has become inexecutable. The issue of

court fee is invariably not a dispute between the plaintiff and the defendant, unless it has a bearing to the pecuniary jurisdiction of the court before

which the case is brought. The court of first instance was a court of unlimited jurisdiction and if the court had also granted the decree, it does not

require to be ascertained now. In fact the plea made by the judgment debtor that the court fee must be collected will ultimately turn up to his

detriment. This issue was also considered in Venkatanarasiah" case. The court will be at liberty to direct the court fee to be paid after the

determination of the amount which is the financial equivalent of the goods and after the amount is paid it could become a part of the decree for

enforcement against the judgment debtor. This procedure may also be adopted by the court in its discretion to recover the amount for court fee to

be calculated and after determining the value and recover it from the judgment debtor along with the amount determined by the court. With these

observations the civil revision is dismissed with costs, with counsel's fee assessed at Rs. 5,000/-.