

(2014) 10 P&H CK 0145

High Court Of Punjab And Haryana At Chandigarh

Case No: CR No. 6757 of 2014

Satish Kumar

APPELLANT

Vs

Jagdish Chander

RESPONDENT

Date of Decision: Oct. 9, 2014

Hon'ble Judges: Bharat Bhushan Parsoon, J

Bench: Single Bench

Advocate: V.K. Gupta, Advocate for the Appellant

Final Decision: Dismissed

Judgement

Bharat Bhushan Parsoon, J.

Ex-parte decree dated 22.4.2003 is pending execution against the JD, petitioner herein where orders are sought against him to hand over vacant possession of the suit property in favour of the decree-holder, respondent herein. Even though the decree under execution is ex-parte against the petitioner-JD but it remains a fact that the JD had been appearing in the said suit throughout and it was at the stage of evidence of the decree-holder/plaintiff that the petitioner-JD was proceeded against ex-parte on 2.9.2002 and never appeared thereafter.

2. The petitioner-JD had then filed an application for setting aside the ex-parte order dated 2.9.2002 against him as well as for setting aside the ex-parte judgment and decree dated 22.4.2003. The said application was dismissed on 24.8.2007 by the Civil Judge (Junior Division), Yamuna Nagar at Jagadhri. Appeal preferred against the said order of 24.8.2007 was also dismissed on 9.1.2009 by the Additional District Judge, Yamuna Nagar at Jagadhri. Order of dismissal of application for setting aside the ex-parte proceedings and ex-parte decree thereafter became final giving finality to the judgment and decree dated 22.4.2003 as well. The objection petition preferred by the JD in execution of the decree dated 22.4.2003 had made elaborate reference to another judgment and decree dated 8.3.1991. The Executing Court has rightly ignored such objections as the decree under execution is of 22.4.2003 and not of 8.3.1991. Relevant observations made by the Executing Court are reproduced as

below:

"In the considered opinion of this court, the question whether this decree dated 8.3.1991 is null and void is to be adjudicated in the execution filed by either parties qua decree dated 8.3.1991. The objections qua said decree dated 8.3.1991 cannot be filed in present execution petition, which is filed for execution of decree dated 22.4.2003. Moreover, the plea of JD that the decree dated 22.4.2003 has been obtained by DH by playing fraud upon the court and by way of concealment of fact is also devoid of merits as now the executing court cannot go behind the decree and it has to enforce the decree as such. Moreover, as stated earlier, the pleas taken by way of present objections have already been raised by the JD in different civil suits and have been adjudicated upon by various court of competent jurisdiction. Thus, it cannot be now re-agitated now. Moreover, judgment and decree dated 22.4.2003 has already attained finality as no appeal/revision is pending before any court of competent jurisdiction. In this context, I find strength from case titled as [Abdul Rehman Shora \(D\) by LRs. and Others Vs. State of Jammu & Kashmir and Another,](#)

3. The objection petition preferred before the Executing Court is nothing but repetition of the earlier pleas raised by the petitioner-JD time and again.

4. Keeping in view the totality of facts and circumstances, no ground is made out to interfere with the well-written impugned order dated 5.9.2014. Affirming the same, this petition being without any merit, is dismissed.