

appellants shall be entitled to seniority and pay fixation notionally from the date when other candidates were appointed though without payment of any back wages.

P.S. Bajwa

Before Rajiv Narain Raina, J

SHINDERPAL SINGH — *Petitioner*

versus

JAGDISH KUMAR AND OTHERS — *Respondents*

CR No.1772 of 2014

March 13, 2014

Constitution of India, 1950 — Art. 227 — Code of Civil Procedure, 1908 — O. 21 R. 10 & Ss. 39, 42— Punjab & Haryana High Court Rules Orders, Vol. I, Chapt. 12, Part A — Rls. 4 & 5 — Transfer of execution proceedings of decree — Court of Civil Judge(Jr.Div.) had been withdrawn for reason of administrative exigencies — Later on, District & Sessions Judge, Sangrur issued letter to party to suit informing him that Court of Addl. Civil Judge (Sr. Div.) was successor to Court of Civil Judge(Jr.Div.) — Petitioner, judgment debtor, assailed order of District Judge on ground that decree was passed by Civil Judge (Jr.Div.) and had now been ordered to be executed by Civil Judge (Sr. Div.) — Held, that — District Judge has to exercise close supervision and control over execution of decrees and business pending in all courts subordinate to him — Term ‘Court which passed the decree’ does not in all situations mean that Judge that passed decree or his co-ordinate Judge alone must possess power to execute a decree — Jurisdiction had been properly exercised by District Judge in transferring execution proceedings to appropriate Court for execution of decree.

Held, that it is also the duty of the District Judge under Rule 5 to see that execution work is not neglected in lower courts. He has to exercise close supervision and control over the execution of the decree business pending in all Courts subordinate to him. The combined reading of the provisions of Order 21 Rule 10, Ss. 39 and 42 of the Code of Civil Procedure read with the aforesaid provisions of the Rules and Orders of the Punjab and Haryana High Court would undoubtedly suggest that the expression ‘the Court which passed the decree’ does not in all situations mean that the Judge that passed the decree or his co-ordinate Judge must alone possess the power to execute a decree in

ordering efficient transaction of business in the subordinate judicial Courts and withdraws Courts according to the felt necessity of the time in arranging court business. It can happen that the Civil Judge (Junior Division) can be named the successor Court and execution business transferred accordingly so that the execution process itself is not held up and the decree rendered ineffective.

(Para 8)

Further held, that jurisdiction has been properly exercised by the District Judge, Sangrur in transferring the execution proceedings in *Jagdish Kumar v. Shinder Pal Singh* to the appropriate Court for execution of the decree.

(Para 10)

Dinesh Kumar, Advocate *for the petitioner.*

RAJIV NARAIN RAINA, J

(1) The challenge in this petition filed under Article 227 of the Constitution of India is to the order dated 16th December, 2013 passed by the learned District Judge, Sangrur directing the parties to appear before the transferee Court of the learned Additional Civil Judge (Senior Division), Sangrur for appearance of the parties on 18th December, 2013 by withdrawing the Execution Application No.70 of 12.05.2000 from the Court of learned Civil Judge (Senior Division), Sangrur being the successor Court of Ms. Harreet Kaur, PCS (J), the then learned Civil Judge (Junior Division), Sangrur holding court that passed the decree.

(2) The petitioner is the judgment debtor under the decree which he seeks to resist in this petition on the ground that the executing court is not the court that passed the decree and is therefore a court without jurisdiction to proceed in the matter.

(3) The learned District Judge, Sangrur has passed the order which is impugned in this petition, as a result of which order, the order dated 04th December, 2013 passed by Sh. B.S. Ramana, learned Civil Judge (Senior Division), Sangrur has not been accepted. The latter order reads as follows:-

“Learned counsel for DH has produced on record Photostat copy of office order of learned District & Sessions Judge, Sangrur whereby it has informed that Court of Shri Gurmeet Singh Tiwana, learned Addl. Civil Judge (Sr. Divn.), Sangrur

is the successor Court of Ms. Harreet Kaur, the then Civil Judge (Jr. Divn.), Sangrur. The decree in question was passed by the Court of Ms. Harreet Kaur, the then Civil Judge (Jr. Divn.), Sangrur. Perusal of present execution file reveals that present execution was directly filed before this Court. As this Court is not competent to entertain and try the present execution as this Court is not the successor Court of Ms. Harreet Kaur, the then learned Civil Judge (Jr. Divn.), Sangrur. As such, a reference is hereby made to the learned District & Sessions Judge, Sangrur for transferring the present execution file from this Court to Shri Gurmeet Singh Tiwana, learned Addl. Civil Judge (Sr. Divn.) Sangrur being successor Court. Parties with counsel are directed to appear before the learned District & Sessions Judge, Sangrur on 16.12.2013. Ahlmad is directed to sent the file complete in all respects to the Court of learned District & Sessions Judge, Sangrur well before the date fixed.”

(4) Therefore, the doubts expressed in the order dated 04th December, 2013 have been clarified by the impugned order dated 16th December, 2013.

(5) The order of the learned District Judge, Sangrur is assailed by the Judgment Debtor on the ground that the Court to which the matter has been remitted for execution is not the trial Court that passed the decree. The contention in short is that the decree was passed by the learned Civil Judge (Junior Division) and has now been ordered by the learned District Judge to be executed by the learned Civil Judge (Senior Division).

(6) Order 21 Rule 10 of the Code of Civil Procedure, 1908 deals with the question. An application for execution of a decree where the holder of a decree desires to execute it, shall apply to the Court which passed the decree or to the officer (if any) appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court, then to such Court or to the proper officer thereof. Section 39 of the Code deals with transfer of decree and provides that the Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court of competent jurisdiction in the four situations (a) to (d) and as further prescribed in sub-sections (ii) to (iv) of the aforesaid section. Section 42 of the Code deals with powers of Court in executing transferred decree. The rule provides that

the Court executing a decree sent to it shall have the same powers in executing such decree as if it had been passed by itself.

(7) Chapter 12, Part A, Volume 1 of the Punjab & Haryana High Court Rules & Orders provides for execution of decrees. Rule 4 thereof empowers the District Judge with its duty of distribution of execution work. It prescribes as follows:-

“4. Distribution of execution work by District Judge. - District Judges should record standing orders regulating the distribution of applications, for the execution of decrees among the Courts subordinate to them, providing for the disposal of cases in which decrees were passed by officers who have ceased to be attached to the district, and for carrying on the execution proceedings already pending such officers at the time of their ceasing to be employed therein. In framing such orders every Court should be required, as far as possible to execute all decrees passed by itself, but, where this is not possible and it is necessary to send the decree to another Court for execution, care should be taken to see that it is a court of competent jurisdiction (Section 39(2)).”

(8) It is also the duty of the District Judge under Rule 5 to see that execution work is not neglected in lower courts. He has to exercise close supervision and control over the execution of the decree business pending in all Courts subordinate to him. The combined reading of the provisions of Order 21 Rule 10, Ss.39 and 42 of the Code of Civil Procedure read with the aforesaid provisions of the Rules and Orders of the Punjab & Haryana High Court would undoubtedly suggest that the expression “the Court which passed the decree” does not in all situations mean that the Judge that passed the decree or his coordinate Judge must alone possess the power to execute a decree in ordering efficient transaction of business in the subordinate judicial Courts and withdraws Courts according to the felt necessity of the time in arranging court business. It can happen that the Civil Judge (Junior Division) can be named the successor Court and execution business transferred accordingly so that the execution process itself is not held up and the decree rendered ineffective.

(9) We are here concerned with the executing Court where the learned District & Sessions Judge of the Sessions Division was compelled to pass an order in the light of the Court of Smt. Harreet Kaur, Civil Judge (Junior Division), Sangrur been withdrawn for reason

of administrative exigences and since a substitute had not been provided by the High Court, the Court of Sh. Ravinder Kumar, Civil Judge (Junior Division), Sangrur was declared as the successor Court of Smt. Harreet Kaur. This was done vide order dated 18th August, 2000 which I called for from the Registrar (Judicial) of this Court to render judgment since it was not on the record of the present petition. Similarly, I have called for and have been shown the order dated 30th November, 2013 issued by the learned District & Sessions Judge, Sangrur being a letter to the suit party informing him that the Court of Sh. Gurmeet Tiwana, learned Addl. Civil Judge (Senior Division), Sangrur is the successor Court of Smt. Harreet Kaur, the then Civil Judge (Junior Division), Sangrur. Copies of order dated 18th August, 2000 and the information supplied on 30th November, 2013 are taken on record as Mark 'A' and Mark 'B'.

(10) I am satisfied that jurisdiction has been properly exercised by the learned District Judge, Sangrur in transferring the execution proceedings in *Jagdish Kumar* versus *Shinder Pal Singh and others* to the appropriate Court for execution of the decree.

(11) For the foregoing reasons, this revision petition fails and is dismissed. The Executing Court is directed to expedite the execution proceedings.

P.S. Bajwa

Before Mahesh Grover, J

CHANDER BHUSHAN ANAND — *Petitioner*

versus

DEVINDER KUMAR SINGLA — *Respondent*

CR No. 582 of 2014

January 30, 2014

East Punjab Rent Restriction Act, 1949 — S.13-A — Code of Civil Procedure, 1908 — Order 21 — Rent petition filed by respondent-landlord — Right of parties crystallized — Petitioner initially contended that landlord became owner only a day prior to his retirement — Suit regarding ownership was pending — Rent Controller declined leave to defend — Revision was dismissed — SLP was also dismissed in 2012 — Landlord filed execution — Petitioner again questioned ownership — Objections dismissed — Review