

IN THE COURT OF ARVIND KUMAR,
ADDITIONAL DISTRICT JUDGE
KURUKSHETRA

UID No. HR-0257

CNR No. HRKU01-007822-2023

CIS(Civil Appeal) No. 327 of 2023

Date of Institution : 03.11.2023

Date of Decision : 10.09.2025

1. Pritam Singh (since deceased) son of Shri Joti Ram, resident of Bhiwani Khera, District Kurukshetra through his L.Rs:-
 - (i) Smt. Phoolo wife of Pritam Singh
 - (ii) Satpal son of Pritam Singh
 - (iii) Prem daughter of Pritam Singh
 - (iv) Meena daughter of Pritam Singh
 - (v) Shakuntala daughter of Pritam Singh
 - (vi) Ram Kishan son of Pritam Singh since deceased through his LRs:-
 - (a) Sarla Rani widow of Ram Kishan
 - (b) Sunil Saini son of Ram Kishan
 - (c) Neha daughter of Ram Kishan
2. Karnail Singh son of Chamel Singh resident of village Dheru Majra, Tehsil Thanesar, District Kurukshetra.
3. Gurmukh Singh son of Shri Sunder Singh, resident of village Durali, Tehsil Thanesar, District Kurukshetra.
4. Balbir Singh (since deceased) son of Shri Sarda Ram, resident of village Umri, Tehsil Thanesar District Kurukshetra through his LRs:-
 - (i) Surji Devi widow of late Sarda Ram who has also expired.
 - (ii) Bala Devi widow of late Shri Balbir Singh who has also expired
 - (iii) Rajesh son of late Shri Balbir Singh

Pritam Singh (since deceased) through LRs Vs Haryana Seed etc.

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(iv) Rajinder Kumar son of late Shri Balbir Singh

All residents of village Umri, Tehsil Thanesar, District Kurukshetra who are LRs of Smt. Surji Devi and Bala Devi.

...Appellants/plaintiffs/Decree holders

Versus

1. Haryana Seed Development Corporation through its Chairman Haryana, Beej Bhawan, Bays no.3-6, Sector 2, Panchkula.
2. Haryana Seed Development Corporation through Managing Director, Haryana, Beej Bhawan, Bays No.3-6, Sector 2, Panchkula.
3. Haryana Seed Development Corporation through its District Manager, Umri, Kurukshetra.

....Respondents/JDs.

4. Subhash Chand son of Shri Budha Ram resident of village Umri, Tehsil Thanesar District Kurukshetra since deceased through his L.R. namely Naveen Sharma son of Shri Subhash Chand resident of village Umri, Tehsil Thanesar District Kurukshetra.

....DH/Performa respondent

Appeal under Order 43 read with Section 104 CPC against the order dated 04.10.2023 passed by the Court of Shri Satish Kumar, the then learned Civil Judge (Senior Division), Kurukshetra whereby the trial court has dismissed the execution of the plaintiffs/appellants.

Present: Mr. R.P.Kaushik, counsel for appellants-plaintiffs.
Shri Randeep Chauhan, counsel for respondents no.1 to 3.
Shri Mohit Tayal, counsel for respondent no.4.

JUDGMENT:

The present appeal is directed against the order dated 04.10.2023 passed by the Court of the then learned Civil Judge (Senior Division), Kurukshetra, vide which the learned Trial Court has dismissed the execution petition of the plaintiffs/appellants.

2. The relevant facts leading to present execution petition are that the execution petition had been filed by the Decree holders to get the decree executed against the defendants/Jds, as the suit of the plaintiffs was decreed by the learned Senior Sub-Judge, Kurukshetra vide judgment and decree dated 26.11.1990 wherein it was mentioned that present decree holders alongwith their LRs are entitled to continuous in service and their termination from service was set aside by the learned Senior Sub Judge. It was further ordered that the present plaintiffs/DHs are entitled to be continuity of services and consequently the present plaintiffs/DHs were re-instated with the continuity of service and with all benefits. It was further held by the learned Trial Court that in case some posts are abolished or some persons are found surplus junior most would be out, so on the rule of last come first go, but if the later on vacancies arises or posts are created, they will have to be called back first in the order of seniority i.e. on the rule of “last go first come” and if still some vacancies remained, new incumbent can be recruited in accordance with law. It was also made clear that the plaintiffs/DHs are entitled to the wages equal to the wages paid to regular

employees of the corporation. It has been further submitted that an appeal was filed before the learned Addl. District Judge, Kurukshetra and the same was dismissed on 14.2.1991. Thereafter, RSA no.1234 of 1991 was filed by the JDs before the Hon'ble High Court and same was also dismissed on 13.5.2010. In last, it was prayed that the defendants/JDs may kindly be directed to allow the living plaintiffs/DHs to continuity of service as their termination from service was set aside by the learned Trial Court and the plaintiffs/DHs may be re-instated with the continuity of service and with all benefits from the date of termination of their services. It was further prayed that two of the DHs have expired and their LRs have been impleaded as Decree holders and the Court is to assess the arrears of wages which the DHs are entitled alongwith all other benefits and interest etc. It was also requested that DHs who are still alive and working may kindly be allowed to join the corporation as their termination order was found illegal and the learned Trial Court had directed that DHs shall be entitled to all the benefits as allowed to the permanent employees of the corporation at that time.

3. Upon notice, defendants/JDs appeared and submitted that the JDs have already made the payment as per the D.C. rate because no regular sanctioned post of labour in the Corporation was there and no such employee was working on regular basis and vide order dated 13.8.2019, Managing Director of JDs had ordered to make payment to the plaintiffs as per D.C. rate and payment to the decree holders has already been made as

per D.C. rate in terms of order dated 13.8.2019 passed by the Managing Director, HSDC and as such the execution petition is fully satisfied.

4. After hearing the parties, learned Executing Court has disposed of the execution petition being fully satisfied vide order dated 4.10.2023.

5. Aggrieved by the said order dated 4.10.2023, the present appeal has been preferred by the appellants in which it has been submitted that the impugned order is against the law and facts available on the file. It has been submitted that the learned Executing Court has gone out of pleadings, evidence and law cited.

6. Learned counsel for the appellants has argued that the suit of the appellants was decreed by the learned Senior Sub Judge, Kurukshetra vide judgment and decree dated 26.11.1990. The matter went upto Hon'ble High Court and the RSA No.1234 of 1991 filed by the respondents was dismissed by the Hon'ble High Court vide order dated 13.5.2010 and the judgment and decree dated 26.11.1990 remained effective against the respondents. In the judgment and decree dated 26.11.1990, the appellants were held entitled to the wages equal to the wages paid to the regular employees of the corporation. The respondents had failed to provide the relief to the appellants so granted to them by the learned Civil Court. The execution petition was filed by the appellants and in the execution proceedings, the payment was made to the appellants/plaintiffs/DHs according to the DC rate. However, vide judgment and decree dated

26.11.1990, they were granted the wages as paid to the regular employees. Even when the appellants were not granted the regular wages and were paid the wages at DC rate, the learned Executing Court vide its order dated 4.10.2023, held the judgment and decree dated 26.11.1990 to be satisfied and the execution petition was thereby disposed of by the learned Executing Court by holding it to be fully satisfied. Learned Executing Court has fallen into an error in holding the execution petition being fully satisfied as the wages paid to the regular employees were not paid to the appellants and the wages were paid to the appellants at DC rate only. The learned Executing Court has fallen into error in not appreciating the judgment and decree dated 26.11.1990 in the right prospective and has wrongly disposed of the execution petition being fully satisfied. The appeal against order dated 4.10.2023 is maintainable. With these submission, learned counsel for the appellants has prayed that the present appeal may kindly be allowed and the order dated 4.10.2023 passed by the learned Executing Court may kindly be set aside. In support of his contentions, he has placed reliance upon case laws titled as *Barkat Ali & Anr. Vs Badri Narain (D) by LRs, AIR 2008 SC 1272 and Desh Bandhu Gupta Vs N.L.Anand & Rajinder Singh, 1994 SCC (1) 131 (SC).*

7. On the other hand, learned counsel for the respondent/JDs no.1 to 3 has argued that the present appeal has been filed on false and flimsy grounds. It has been argued that the respondents have honoured the

judgment and decree dated 26.11.1990 and they were re-instated in the service with continuity of the service and there was no regular sanction post of labour in the corporation and no such employee was working on the regular basis due to which the plaintiffs were paid the wages at the DC rate. Since there was no regular employee on the post of labour in the corporation, so no payment was admissible to the regular employee and the employee on the post of labour can at the most be held entitled to the wages on DC rate and the learned Executing Court has rightly disposed of the execution petition being fully satisfied. The appeal has wrongly been filed by the appellants and the same is not maintainable and if the appellants were aggrieved with order dated 4.10.2023, then they should have file the revision against the order dated 4.10.2023 and since the appeal against the order dated 4.10.2023 is not maintainable, so the present appeal is liable to be dismissed. With these submissions, learned counsel for the respondents/JDs no.1 to 3 has prayed that the present appeal may be dismissed.

8. On the other hand, learned counsel for the respondent no.4 has argued that the wages admissible to the regular employees of the department have not been granted to the decree holder and hence, the decree holders are entitled to the wages paid to the regular employees of the department and hence, the order dated 4.10.2023 is liable to be set aside.

9. I have heard learned counsel for the parties of case and have gone through the case file with the assistance of the learned counsel for the parties.

10. It is the admitted case of the parties that the plaintiffs had filed the civil suit which was decreed by learned Trial court vide judgment and decree dated 26.11.1990 and that judgment and decree was assailed by the respondents but no relief was granted to them and ultimately the regular second appeal no.1234 of 1991 was also dismissed by Hon'ble High Court vide judgment dated 13.5.2010. The perusal of the decree dated 26.11.1990 shows that among the other reliefs, the wages equal to the wages paid to the regular employee of the corporation were granted to the appellants/plaintiffs. The relevant portion of the decree dated 26.11.1990 regarding the payment of wages is reproduced as under:-

“it is ordered that the plaintiffs are entitled to continue in service and, therefore, their termination from service is set aside and the plaintiffs are entitled to continue in the service and consequently the plaintiffs are reinstated with the continuity of service and all benefits. In case some posts are abolished or some persons are found surplus, junior most would be out on the rule of Last come First go, but if later on vacancies arise or posts are created they will have to be called back first in the order of seniority, that is, on the rule of ‘Last go First Come’ and if still some vacancies remain, new incumbents can be recruited in accordance with law.

It is also made clear that the plaintiffs are entitled to the wages equal to the wages paid to regular employees of the corporation”.

11. The perusal of the case file shows that the execution petition was filed by the plaintiffs/DHs and vide order dated 4.10.2023, the learned Executing Court has disposed of the execution petition being fully satisfied. In the order dated 4.10.2023, the order dated 13.8.2019 passed by the Managing Director of Haryana Seeds Development Corporation was reproduced in which it was mentioned that there is no regular sanctioned post of labour in the corporation and no such employee is working on the regular basis and the payment to the plaintiffs was made according to the DC rates and the learned executing court had held it to be the valid compliance of the judgment and decree dated 26.11.1990 and had disposed of the execution petition being fully satisfied.

12. The main grievance of the appellants is that they should have been granted the wages admissible to the regular employees and since the wages have been paid to them as per the DC rate, so, there is non compliance of the judgment and decree dated 26.11.1990 and the learned Executing Court should not have come to conclusion that the execution petition has been fully satisfied.

13. As already discussed, the respondents have taken the stand that the judgment and decree dated 26.11.1990 has been fully satisfied and also

the appeal against the order dated 4.10.2023 is not maintainable. In these circumstances, since the maintainability of the appeal against the order dated 4.10.2023 has been questioned, so first of all it would be checked whether or not the present appeal against the order dated 4.10.2023 is maintainable.

14. Learned counsel for the appellants has submitted that the appeal is maintainable as the objection under Order 21 rule 23 of CPC was allowed by the learned Executing Court and had disposed of the execution petition.

15. The perusal of the case file shows that on dated 5.12.2018, the JDs had put appearance and the case was adjourned for filing of objections. In this regard order 21 Rule 23 of CPC is relevant and as per order 21 Rule 23 (2) of CPC, if the objection is preferred then the executing court shall consider such objection and make such order as it think fit.

16. In the present case, the perusal of the case file shows that though the objections were invited by the learned executing court but the objections were never preferred/filed by the JDs and ultimately on 14.8.2019, it was made clear to the JDs that in case the orders are not implemented then coercive action would be taken by the court against them. Meaning thereby, the opportunity to file the objections under order 21 R-23(2) CPC was exhausted/closed and the learned Executing Court had proceeded to execute the decree dated 26.11.1990. The further perusal of the

case file shows that the execution petition was adjourned on various dates and on 2.9.2019, the documents and the calculation sheet was filed from the side of the DHs and the counsel for the JDs had sought the time to check the documents and the calculation made by the DHs and thereafter the case was adjourned for the verification of the calculation submitted by the DHs and on 13.5.2022 last opportunity was granted for the said purpose. On 18.8.2022, the application for attachment and sale/auction of the property of the JDs was filed. The copy of the same was supplied to the opposite party and the case was adjourned for filing reply to the same and the reply to application for attachment and sale/auction of the property of the JDs was filed on 26.8.2022. Thereafter, on some dates the case was adjourned and on 2.1.2023, the case was fixed for consideration and ultimately vide order dated 4.10.2023, the execution petition was disposed of being fully satisfied. Meaning thereby, the order dated 4.10.2023 was ultimately passed while considering the application moved by the DHs for attachment and sale/auction of the property of the JDs.

17. As already discussed, the execution petition was not disposed of on the objections preferred under Order 21 Rule 23 (2) of CPC. Otherwise also even if it is presumed that the execution petition was disposed of under Order 21 Rule 23 (2) of CPC, then also there is limited scope of filing of the appeals against orders passed by the Civil Court and that scope has been provided under Order 43 rule 1 CPC. Order 43 Rule 1 CPC has extensive

list of the orders qua which the appeal can be filed and since the order dated 4.10.2023 was passed in the execution proceedings and since the execution proceedings are filed under Order 21 CPC, so the provisions of order 43 Rule 1 CPC as applicable to order 21 (XXI) CPC are reproduced as under:-

1. Appeals from Orders.- An appeal shall lie from the following orders under the provisions of Section 104 namely:-

(a) *****

(b) *****

(c) *****

(d) *****

(e) *****

(f) *****

(g) *****

(h) *****

(i) an order under Rule 34 of Order XXI on an objection to the draft of a document or of an endorsement.

(j) an order under Rule 72 or rule 92 of Order XXI setting aside or refusing to set aside a sale;

(ja) an order rejecting an application made under sub-rule (1) of rule 106 of Order XXI, provided that an order on the original application, that is to say, the application referred to in sub-rule (1) of rule 105 of that Order is appealable.

(k) *****

(l) *****

(m) *****

(n) *****

(o) *****

(p) ****

(q) *****

(r) ****

(w) *****

18. So in view of the provisions as contained in order 43 Rule 1 CPC, the appeal qua the order passed in the execution petition can be filed with respect to the order passed under order 21 Rule 34, order 21 rule 72, order 21 rule 92, order 21 rule 106 (1) and order 21 rule 105 (1).

19. As far as the judgments relied upon by the learned counsel for the appellants in *Barkat Ali's and Desh Bandu Gupta's (supra) Cases* are concerned, it is observed that these judgments are not disputed, but are not applicable to the peculiar facts and circumstances of the present case because in *Desh Bandhu Gupta's (supra) case*, learned counsel for the appellants has stressed on the para no.4 of the judgment but the contents of the para no.4 of the judgment in Desh Bandhu Gupta's case are qua the contentions of the learned counsel for the respondents of that case.

20. As far as the judgment in *Barkat Ali's (supra) case* is concerned, this judgment is qua the application of the principle of *res-judicata* in execution proceedings and in that case the objections were filed by the party concerned after passing of the order of attachment by the learned Executing Court of that case and hence, the observations of Hon'ble Supreme Court of India in *Barkat Ali's (Supra) case* are not applicable to

the peculiar facts and circumstances of the present case and it is observed that even if the order dated 04.10.2023 is deemed to be the order passed on the objections under Ord. 21 R. 23(2) then also the appeal qua that order is not maintainable.

21. It is also to be noted that objections can also be preferred by the parties under order 21 Rule 58 and as per order 21 rule 58 (4) of CPC when the claim or objection is adjudicated under Rule 58 then the order would have the same force and subject to the same conditions, as to appeal or otherwise, as if it were a decree, but the provisions of Order 21 rule 58 CPC are applicable only when the property is attached which is otherwise clear from the wording of order 21 rule 58 (1) CPC which starts with the wording that where any claim is preferred to or any objection is made to the attachment of any property attached in the execution of a decree.

22. However, in the present case, no attachment of the property of the JDs was done by the learned Executing Court and only the application for attachment and sale/auction of the property of the JDs was filed by the DHs and the reply to the same was called by the learned Executing Court and thereafter ultimately it passed the order dated 4.10.2023 and in that sense, the provisions of order 21 Rule 58 (4) CPC are also not applicable to the order dated 4.10.2023 passed by the learned Executing Court.

23. In view of my above noted finding, it is observed that the order dated 4.10.2023 was not passed under Order 21 rule 23 (2) of CPC and even against the order passed under order 21 Rule 23 (2) CPC, the appeal is not maintainable because it is not enlisted in order 43 CPC and the order dated 4.10.2023, also does not fall within the preview of order 21 rule 58 (4) CPC and hence, it is observed that the appeal against the order dated 4.10.2023 is not maintainable.

At this stage, learned counsel for the DHs has submitted that more than one and half year has already passed since the passing of the order dated 4.10.2023 and the relief can be granted under Section 151 of CPC. Heard. On this point, it is observed that order 43 CPC has the exhaustive list of the orders against which the appeal is maintainable and all the orders passed by the executing Court are not appealable and the legislature in its wisdom has included (in Ord. 43 CPC) only some specific orders passed by the learned Executing Court to be appealable and the order dated 4.10.2023 does not fall with the preview of order 43 CPC and is not amenable to appeal and even by the exercise of the Section 151 CPC, the relief cannot be granted to the appellants, because if done so, it can amount to assuming the powers of Hon'ble Revisional Court.

24. Thus, in the light of above discussion, the present appeal is dismissed, (with costs), being not maintainable. Memo of cost be prepared

Pritam Singh (since deceased) through LRs Vs Haryana Seed etc.

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accordingly. Trial court record be sent back along-with a copy of this judgment. Appeal file be consigned to the record room after due compliance.

**Pronounced in open court:
10.09.2025**

**(Arvind Kumar)
Additional District Judge,
Kurukshetra. UID:HR-0257**

Note: It is certified that this judgment contains 16 pages and all the pages have been checked and signed by me.

Reetu Goel

**(Arvind Kumar),
ADJ, Kurukshetra. 10.09.2025**

(Arvind Kumar)
ADJ, Kurukshetra.10.09.2025

Pritam Singh (since deceased) through LRs Vs Haryana Seed etc.

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Present: Mr. R.P.Kaushik, counsel for appellants-plaintiffs.
Shri Randeep Chauhan, counsel for respondents no.1 to 3.
Shri Mohit Tayal, counsel for respondent no.4.

Arguments heard. To come up after lunch for orders.

10.09.2025 (Arvind Kumar)
Additional District Judge,
Kurukshetra. UID:HR-0257

Present: Mr. R.P.Kaushik, counsel for appellants-plaintiffs.
Shri Randeep Chauhan, counsel for respondents no.1 to 3.
Shri Mohit Tayal, counsel for respondent no.4.

File taken up again after lunch for orders.

Vide my separate judgment of the even date, the present appeal is hereby **dismissed (with costs) being not maintainable**. Memo of cost be prepared accordingly.

Trial court record be sent back along-with a copy of this judgment. Appeal file be consigned to the record room after due compliance.

Pronounced in open court: (Arvind Kumar)
10.09.2025 Additional District Judge,
Kurukshetra. UID:HR-0257