

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA****Execution Petition No. 30 of 2021****Reserved on: 23.12.2022****Decided on: 13.01.2023**

---

Haramrinder Singh and others .....Petitioners.

**Versus**

---

Sh. Shiv Kumar and others ...Respondents.

**Coram*****The Hon'ble Mr. Justice Ajay Mohan Goel, Judge.*****Whether approved for reporting?<sup>1</sup> No**

---

For the petitioners : Mr. R.L. Sood, Senior Advocate with  
Mr. Arjun Lall, Advocate.

For the respondents : Mr. Neeraj Gupta, Senior Advocate  
with Mr. Janesh Gupta, Advocate for  
respondent No. 1/JD.

---

**Ajay Mohan Goel, Judge**

By way of this execution petition filed under Order 21, Rules 10 and 11 of the Code of Civil Procedure, the petitioners have sought execution of the judgment and decree passed by this Court dated 16.07.2021, in Civil Suit No. 83 of 2020, titled as Sh. Haramrinder Singh and others vs. Sh. Shiv Kumar and another. The relevant portion of the decree, execution whereof is being sought by the Decree Holder, reads as under:-

*“COMPROMISE DECREE*

*This Civil Suit No. 83 of 2020 filed on 09.10.2020, instituted on 13.10.2020 and coming on for hearing on 16<sup>th</sup> day of July, 2021 before a Single Bench of*

---

<sup>1</sup> *Whether reporters of the local papers may be allowed to see the judgment?*



*Hon'ble Mr. Justice Ajay Mohan Goel, Judge, High Court of Himachal Pradesh, Shimla in the presence of Mr. Deepak Kaushal, Advocate for the plaintiffs, Mr. Ashok Tyagi, Advocate for the defendant No. 1 and Nimish Gupta, Advocate for the proforma defendants No. 3 and 4; it is ordered that for the reasons given in the judgment dated 16.07.2021, the suit is decreed in terms of the compromise deed (Ext. C-1). The compromise deed (Ext.C-1) as well as statements of parties shall (copy enclosed) form part of the decree.”*

2. Learned Senior Counsel appearing for the Decree Holders, has argued that the suit filed by the decree holders was decreed by the Court in terms of the compromise, which was entered into between the parties during the pendency of the suit. Learned Senior Counsel has drawn the attention of the Court to the compromise deed and he has submitted that as the decree passed by the Court, in terms of the compromise entered into between the parties, has not been abided by the judgment debtor/ defendant, therefore, the decree in issue be executed as per law.

3. Objections have been filed to the execution petition under Section 47 of the Code of Civil Procedure on behalf of judgment debtor No. 1, who has *inter alia* taken the plea that the execution petition seeking enforcement of the compromise decree



is legally not tenable and the decree holders have approached the Court by suppressing material facts. It has been further urged on behalf of the judgment debtor that the execution petition is not maintainable for the reason that the same was premature and as the events had not unfolded in the mode and manner in which the compromise was entered into, therefore, the execution petition was completely misconceived. As per judgment debtor, the intent of the decree holders was to take over the Stone Crusher from the judgment debtor and forcibly enter into the property and in the absence of there being any enforceable cause to execute the decree, the execution petition was not maintainable. It is further the stand of the judgment debtor that the Stone Crusher could have been made operational only after the receipt of the requisite permissions from the statutory authorities and the consent to operate was granted/renewed in favour of the judgment debtor only in the month of March, 2022 and further the mining application stood approved only on 22.03.2022, and therefore, as earlier there was no valid permission with the judgment debtor to run the Stone Crusher, therefore, the compromise deed had in fact not become executable. As per the objector, he was served upon a communication dated 06.07.2021 by Himachal Pradesh State Pollution Control Board, Regional Office, Poanta Sahib, in terms whereof the objector was informed that as the renewal or consent to operate the stone crusher had expired, therefore, stone crusher



could not be operated unless the permission was obtained. As per him, the objector had applied for the grant of permission which was to take time, yet he was intending to generate money to honour his commitment. He had requested the authorities to permit him to lift the uncrushed material and permission was accorded to him by the authorities but for a limited period of three months and only to remove uncrushed material from the site approximately 5000 M.T. in terms of order dated 25.09.2021. It was thereafter that the Mining Officer on 17.01.2022 had issued the requisite permission. It was further the contention of the objector that the consent to operate the stone crusher was not in force and permanent registration came to be renewed on 31.01.2020 and as there was no valid permission with the objector after the execution of the compromise, therefore, the execution petition was not maintainable.

4. The petitioners/Decree Holders refuted the objections in terms of the reply filed, in which, they *inter alia* stated that the documents placed on record demonstrated that the objector was indeed running the stone crusher and had the requisite permissions as on 25.09.2021 to lift the old verified uncrushed material approximately 5000 M.T. generated from the mining lease area. The decree holders also took the stand that if they were preventing the objector to operate the stone crusher, then nothing prevented the objector to approach this Court in terms of the



compromise deed and the mining plan, in fact, was issued in favour of the objector for a period of 15 years up to 19.11.2030 and electricity bills which were placed on record by the decree holders clearly demonstrated that the objector was consuming the electricity by operating the stone crusher and he even failed to clear the electricity dues. It was further the stand of the decree holders that under the garb of alleged non-activation of the stone crusher, the objector had successfully disposed of more than 4500 M.T. of already extracted material lying on the site and whereas in terms of the permission granted on 25.09.2021, as re-affirmed on 17.01.2022, the objector had the permission to lift and use the old verified uncrushed material approximately 5000 M.T. for the period of three months. It was a matter of record that when the Local Commissioner appointed by this Court visited the site, he gave his report that the amount of un-extracted material on the spot was only 500 M.T. As per decree holders, this clearly demonstrated that the objector had disposed of the balance un-extracted material and had misappropriated the said amount. It was further the contention of the decree holders that communication dated 06.07.2021, appended with the objections as OW2 was prior to recording of the compromise deed, which was entered into on 10.07.2021 and the objector entered into the compromise deed, knowingly fully well the issuance of communication dated 06.07.2021. It was further the contention of the decree holders



that the order passed by National Green Tribunal in OA No. 358 of 2016, was set aside in CWP No. 2067 of 2019, on 11.3.2020 and it was duly proved from the documents on record that out of the uncrushed material available on the site, 5000 M.T. was lifted by the objector and only 500 M.T. material was available on the site on 14.2.2022, when the Local Commissioner visited the site.

5. Alongwith the execution petition, the decree holders also filed an application under Order 21, Rule 37 of the Code of Civil Procedure for issuance of a warrant of arrest and detention of the judgment debtor as also under Order 21, Rule 41 of the Code of Civil Procedure for examination of the judgment debtor No. 1 on oath and also for his personal appearance in the Court and issuance of directions to the judgment debtor to disclose on affidavit the requisite information pertaining to judgment debtor as was mandatorily required to be provided in form No. 16(A) Appendix-E, of the Civil Procedure Code. Reply to these applications have been filed.

6. Learned Senior Counsel for the parties were heard at length.

7. Before proceeding further, it is relevant to refer to the compromise entered into between the parties in terms whereof the compromise decree was passed. The suit filed by the plaintiffs was for declaration that the plaintiffs were partners qua their respective shares in M/s Shiva Stone Crusher and Screening and Washing



Plant at Churan, PO Talaun, Tehsil Nahan, District Sirmaur, Himachal Pradesh, in terms of the registered partnership deed dated 14.8.2017, and therefore, their names be recorded in the record of the Mining Officer as also the Mining Department and for decree of possession being working partner of M/s Shiva Stone Crushers having 50% share in the aforesaid business, as defendant No. 1 was not allowing the plaintiffs to enter into the premises of the stone crusher and work as per law. Prayer was also made for rendition of accounts of M/s Shiva Stone Crusher-cum-Screening-cum-Washing plant, Churan, and for decree of prohibitory injunction and mandatory injunction, restraining defendant No. 1 from alienating and creating any charge qua third part over the assets of the share of the plaintiffs in the stone crusher.

8. The compromise entered into between the parties was to this effect that the plaintiff had abandoned the claim as made in Civil Suit No. 83 of 2020 and agreed that first party to the compromise i.e. defendant No. 1, shall pay an amount of Rs.42.00 Lac to the second party, i.e. the plaintiffs after activation and running of the stone crusher and the mode of payment, as agreed between the parties was that first party will pay installment of Rs. 1.50 Lac per month on or before 15<sup>th</sup> of each month and the amount of installment would be payable and continued to be paid after running, functioning and operation of the stone crusher and



defendant No. 1 would be exempted to make the installment during the period of lockdown and rainy season, till the operation of the stone crusher is resumed. It was further agreed between the parties that the plaintiffs shall be having no right, title or interest in the firm after payment of the entire amount and that the plaintiffs would have no concern whatsoever with the business and shall be deemed to have been discharged from the firm. To be more precise, the terms and conditions of the compromise are quoted herein below:-

*(I) That the second party has abandoned the claim as made in the civil suit no. 83/2020 and has agreed that first party shall pay a total amount of Rs. 42.Lacs to the second party after activation and functioning and running of stone crusher and the mode payment is agreed between the party that that the first party will pay Installment of 1.50 Lac per month on every 1 to 15% of every month and the amount of Installment will be payable and continue after running, functioning and operation of stone crusher and the first party will be exempted to make the Installment during period of lockdown and raining season till the operation of stone crusher resumed.*

*(ii) That the second party shall not have any right title or interest in the firm after payment of the entire amount and second party would have no concern whatsoever with the business and shall be deemed to have been discharged from the firm and shall not have any claim of whatsoever against the*



*first party after payment of entire amount. It is made clear that after payment entire amount the second party shall not in any way interfere in the working of the store crusher or shall not have any right, title or interest in the business of crusher.*

*(iii) That on the basis of this compromise the suit of the second party ie. C.S. No. 83/2020 pending before the Hon'ble High Court Shimla (HP) shall be decreed as compromise decree and similarly the Civil Suit no. 81/2020 (titled as (1) Shiva Stone Crusher and Washing Screening Plant, through its sole proprietor Sh. Shiv Kumar (2) Shiv Kumar son of Shri Ravi Chand Versus (1) Smt. Shanti Devi W/o A.K. Parshad (2) Haramrinder Singh son of Shri Inder Pal (3) Shri Ravi Versus son of Shri Daya Ram Verma) pending before the Ld. Senior Civil Judge, Nahan District Sirmour shall be withdrawn by the first party.*

*(iv) That after payment of entire amount and decree civil suit No. 83/2020 (titled as (1) Haramrinder Singfh son of Shri Inder Pal, (2) Smt. Shanti Devi wife of A.K. Parshad, (3) Shri Neelam Kumar son of Shri Nathu Ram Versus (1) Shiv Kumar son of Ravi Chand (2) Mining Officer, Mining Department Nahan, (3) Ravi Verma son of Daya Ram Verma) pending before Hon'ble High Court Shimla (HP) the second party shall not in any way interfere in the working of the stone crusher of shall not have any right, title or interest in the business of crusher on the bases partnership deed dated*



14.08.2017 registered in the sub Tehsil office Dulher, Distt. Una (HP).

(v) That third party i.e. Sh. Neelam Kumar s/o Sh. Nathu Ram (Plaintiff No. 3) and Bhushan Kumar S/o Sh. Nathu Ram now deceased through his widow Smt. Anjana Devi, resident of Churan, P.O. Palion, Tehsil Nahan, Distt Sirmour (HP) (performa defendant No. 4) are signatory to this compromise has already settled the dispute outside the court with the first party and has already settled their claim for Rs. 49,60,000/- and after payment of entire amount shall not in any way interfere in the working of the Stone Crusher or shall not have any right, title or interest in the business of the stone crusher. It is also agreed between first party and third party that the mode of payment of settlement amount i.e. 49.60,000 is that the first party will pay 3 lac (three Lac) per month to third party on 1<sup>st</sup> to 15<sup>th</sup> of every month and the amount of instalment will be payable and continue after running, functioning and operation of stone crusher and the first party will be exempted to make the instalment during period of lockdown and raining season till the operation of stone crusher resumed and it is also agreed between first party and third party regarding the land i.e. 12 Bigha 18 Biswa which has been given by the third party to first party for stone crusher plant for five years and the mode of payment regarding the land rent has been fixed Rs. 50,000/- Bigha per annum by third party and the first party will pay the rent amount i.e. Rs. 50,000/- per annum in the account



*of third party before fifth date of calendar of every month and till the working of stone crusher and it is also agreed between first party and third party that 10% percent amount will be increase after three years till the working of stone crusher on the rent amount i.e. 50,000/- Bigha per annum and after expiry of five years the third party have right to vacate and dispossess over the land and it will be consent and right o the third party weather land will be given for further period or not.*

*(vi) That all the party would be bound to follow the aforesaid terms and conditions and would act and performed the same strictly and the party who breach the terms and condition of the compromise shall have right to enforce the compromise decree through the court of law. It is also agreed that if the first party commit breach in mode of payment to second party and third party and in that conditions second party and third party absolute right of ownership on stone crusher plant alongwith machinery and re-material till the realization amount and it is also agreed between the party that when the compromise effected after court process and then the royalty ID to be opened for resuming the stone crusher and also further agreed that second and third party will not create any hurdle in the working of stone crusher and not may any unlawful complaint to any department against the stone crusher.”*



9. As per decree holders as the terms of the compromise have not been adhered to by the judgment debtors, hence the execution.

10. In **Pushpa Sahakari Avas Samiti Limited** vs. **Gangotri Shahakari Avas Samiti Limited and others**, (2012) 4 Supreme Court Cases 751, while dealing with the submissions of one party that the execution was premature and that the compromise decree could have been taken up for the purpose of execution, Hon'ble Supreme Court of India held as under:-

*“18. Presently, we shall advert to the submission of Mr. Dubey that the executing court could not have entertained the application as it was filed before the expiration of the period. The learned senior counsel has relied on the decision rendered in Lala Ram<sup>2</sup>. In the said case, an order of acquittal passed -by the learned Magistrate was assailed before the High Court by seeking leave under [Section 417\(3\)](#) of the Code of Criminal Procedure, 1898 and the High Court granted leave as a consequence of which the appeal came to be filed eventually. The High Court accepted the appeal and convicted the accused. It was contended before this Court that the appeal could not have been entertained by the High Court having been filed beyond the expiry of sixty days in view of the language employed under [Section 417\(4\)](#) of the Code. Emphasis was laid on the term "entertain".*



19. *Repelling the contention, this court held as follows: (Lala Ram case, SCC pp. 175-76, para 9)*

*"9. The learned counsel also suggests that the word "entertain" which occurs in [Section 417 \(4\)](#) means "to deal with or hear" and in this connection he relies on the judgment of this Court in [Lakshmi Rattan Engineering Works v. Asst. CST6](#). It seems to us that in this context "entertain" means "file or received by the Court" and it has no reference to the actual hearing of the application for leave to appeal; otherwise the result would be that in many cases applications for leave to appeal would be barred because the applications have not been put up for hearing before the High Court within 60 days of the order of acquittal"*

20. *On a perusal of the aforesaid passage in Lala Ram case<sup>2</sup>, it is vivid that the three-Judge Bench interpreted the terms 'were entertained' in the context they were used under the old Code and did not accept the submission 'to deal with or hear'. Regard being had to the context, we have no shadow of doubt that the said decision is distinguishable and not applicable to the obtaining factual matrix.*

21. *In this context, we may refer with profit to the two-Judge Bench decision in [Martin & Harris Ltd. v. District Judge](#){7}. In the said Case, the*



*Court was interpreting the language employed in the proviso to Section 21(1) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. The proviso stipulated that where the building was in occupation of a tenant before its purchase by the landlord, such purchase being made after the commencement of the Act, no application shall be entertained on the grounds mentioned in Clause (a) of the said Section unless three years' period had lapsed since the date of purchase. A contention was canvassed that filing of an application before the expiry of the three years' period was barred by the provision contained in the said proviso.*

*22. Repelling the said submission, the Bench opined thus: (Martin case<sup>7</sup>, SCC pp. 742-43, para 8) -*

*"8....It must be kept in view that the proviso nowhere lays down that no application on the grounds mentioned in clause (a) of Section 21(1) could be "instituted" within a period of three years from the date of purchase. On the contrary, the proviso lays down that such application on the said grounds cannot be "entertained" by the authority before the expiry of that period. Consequently it is not possible to agree with the extreme contention canvassed by the learned Senior Counsel for the appellant that such an application could not have*



*been filed at all within the said period of three years."*

23. After so stating, the Bench distinguished the decision rendered in *Anandilal Bhanwarlal v. Kasturi Devi Ganeriwala*(8) which dealt with "institution" and eventually came to hold as follows: -(Martin case 7, SCC p. 744, para 8)

*"8....Thus the word "entertain" mentioned in the first proviso to Section 21(1) in connection with grounds mentioned in clause (a) would necessarily mean entertaining the ground for consideration for the purpose of adjudication on merits and not at any stage prior thereto as tried to be submitted by learned Senior Counsel, Shri Rao, for the appellant. Neither at the stage at which the application is filed in the office of the authority nor at the stage when summons is issued to the tenant the question of entertaining such application by the prescribed authority would arise for consideration."*

24. In this context, we may usefully refer to the decision in *Hindusthan Commercial Bank Ltd. v. Punnu Sahu*9. In the said case, this Court was interpreting Rule 90 of Order XXI of the Code of Civil Procedure as amended by the Allahabad High Court. The amended proviso to Rule 90 stipulated the circumstances under which no application to set aside the sale shall be



entertained. It was contended before this Court that the expression "entertain" found in the proviso referred to the initiation of the proceedings and not to the stage when the Court had taken up the application for consideration. This Court referred to the earlier decision in *Lakshmiratan Engineering Works Ltd. v. CST*<sup>6</sup> and opined that the expression "entertain" conveys the meaning "adjudicate upon" or "proceed to consider on merits".

25. In *State of Haryana v. Maruti Udyog Ltd.*<sup>10</sup>, this Court was dealing with *Section 39 (5)* of the Haryana General Sales Tax Act, 1973 which stipulated that :

“39(5) No appeal shall be entertained unless it is filed within sixty days from the date of the order appealed against and the appellate authority was satisfied that the amount of tax assessed and the penalty and interest, if any, recoverable from the persons had been paid:”

The Bench interpreting the term "entertainment" of the appeal ruled that when the first proviso to *Section 39 (5)* speaks of the "entertainment of the appeal", it means that the appeal will not be admitted for consideration unless there is satisfactory proof available of the making of the deposit of admitted tax.

26. In view of the aforesaid authorities in the field, the submission of Mr. Dubey that the



*executing court could not have entertained the execution proceeding solely because it was instituted before the expiry of the period stipulated in the compromised decree despite the factum that by the time the Court adverted to the petition the said period was over, is absolutely unacceptable.”*

11. Keeping the aforesaid adjudication of the Hon’ble Supreme Court in mind, the Court will now deal with the respective contentions of the parties.

12. Rules 10 and 11 of Order 21 of the Code of Civil Procedure provides that where the holder of a decree desires to execute it, he 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 and where a decree is for the payment of money, the Court may, on the oral application of the decree holder at the time of the passing of the decree, order immediate execution thereof by the arrest of the judgment debtor, prior to the preparation of a warrant if he is within the precincts of the Court. The compromise decree was passed by the Court on 16<sup>th</sup> July, 2021.

13. The execution petition was filed on 19<sup>th</sup> November, 2021. The objections were filed to the execution petition on 27.03.2022. Till the time the hearing was concluded by this Court in the present proceedings, no payment stood made by the



judgment debtor in terms of the compromise entered into between the parties. Whereas the plea of the judgment debtor, on one hand, was that it was not having the requisite permissions to run the stone crusher and that too the decree holders were creating hurdles in the running of the stone crusher, the decree holders contended on the basis of documents produced on record that the stone crusher was being run by the judgment debtor which was evident from the fact that there was sale of the material by the judgment debtor which was beyond the already extracted material at the time of the entering into the compromise deed and therefore, the contention of the judgment debtor that the stone crusher was not functional, was totally incorrect.

14. Having carefully gone through the material on record as well as the objections filed by the judgment debtor and reply thereto by the petitioners, this Court finds that there is no merit in the objections. The compromise entered into between the parties was clear and categorical that judgment debtor No. 1 had agreed to pay an amount of Rs.42.00 Lac to the plaintiffs and this amount was in lieu of the abandonment of their claim in civil suit No. 83 of 2020 and the amount was to be paid in installments of Rs.1.50 Lac per month, payable on or before 15<sup>th</sup> of each month and the judgment debtor was exempted from making the payment of installments during the period of lockdown and rainy season. The compromise deed is dated 10<sup>th</sup> July, 2021. The deed does not



contemplate any specific date from which the installment was payable, which implies that if not from the month of entering the compromise deed, the same was payable at least from the next month, i.e. August, 2021. The documents on record demonstrate that there has been sale of material from the site by the judgment debtor and the same is much beyond the quantity of extracted material quantified by the Local Commissioner appointed by the Court as also the judgment debtor. Therefore, the contention of the judgment debtor that the stone crusher was not functional, cannot be accepted on its face value.

15. Be that as it may, as it is the own stand of the objector/judgment debtor that the requisite permissions were available with it somewhere in March, 2022 and if that was the case, then it is not understood as to why no installment was paid thereafter by the judgment debtor to the decree holders and further why no endeavour was made by the judgment debtor to adhere to the compromise till the date of final hearing of this case. This clearly demonstrates that the compromise deed has not been adhered to by the judgment debtor and resultantly, the objections which have been filed against the execution of the compromise deed, are dismissed. Accordingly, a warrant of possession qua M/s Shiva Stone Crusher and Screening and Washing Plant at Churan, PO Talaun, Tehsil Nahan, District Sirmaur, Himachal Pradesh, alongwith plant and machinery at the plant site as per list of plant



and machinery Annexure B with the execution petition, is issued in favour of the decree holders and against the judgment debtor and the judgment debtor is further restrained from creating any charge upon M/s Shiva Stone Crusher and Screening and Washing Plant at Churan, or encumbrance thereupon alongwith the plant and machinery as per Annexure B and immoveable lease property, i.e. Khata Khatauni No. 4/6 min, 17 nos, 177/74, measuring 12-18 bighas, situated at Churan, PO Talaun, Tehsil Nahan, District Sirmaur, Himachal Pradesh.

Now list on 10<sup>th</sup> of April, 2023.

January 13, 2023  
(narender)

**(Ajay Mohan Goel)**  
**Judge**