

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Civil Revision No.4656 of 2015 (O&M)

Date of Decision: August 28, 2015

Sandeep Dutt

...Petitioner

Versus

Ms.Vidya Mahankali Rao & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Manish Soni, Advocate,
for the petitioner.

Mr.Sanjeev Sahay, Advocate with
Ms.Meenakshi Dogra, Advocate,
for the caveator.

AMIT RAWAL, J. (Oral)

The challenge in the present petition is to the order dated 4.7.2015 (Annexure P-4), whereby the trial Court, while rejecting the objections filed by the petitioner-judgment debtor, passed two-fold orders by issuing warrant of possession with regard to the property, namely, D-91 Belvedere Park, DLF Phase-III, Gurgaon and warrant of attachment with regard to the immovable property and bank accounts of the judgment debtor mentioned in Annexure-C of the petition and the Bailiff has been directed to comply with the orders immediately and furnish his report on 7.7.2005, giving liberty to him to seek police assistance, if need be.

Mr.Manish Soni, learned counsel appearing on behalf of the petitioner-judgment debtor submits that against the judgment and decree dated 11.3.2015, an appeal under Section 96 of the Civil Procedure Code had been filed, though barred by limitation and, therefore, the interim injunction could not be granted by the Court. In the meantime, execution application had been filed on 15.4.2015 and the orders passed by the trial Court are not in accordance with the provisions of Order 21 Rule 35 CPC and as well as Chapter-7, Volume-4, Part-J of the High Court Rules and Orders. He further submits that the trial Court could not have granted the permission to the Bailiff to seek police assistance in the first instance. He further submits that on 6.7.2015, the Bailiff had executed the decree by throwing out the articles belonging to the petitioner-judgment debtor and since in this exercise much time had elapse, the Bailiff came to the premises on the next day, i.e., 7.7.2015, but has reported that the premises were lying locked.

Mr.Sanjeev Sahay, learned counsel appearing on behalf of the caveator submits that the story projected during the course of the proceedings and as well as the petition is contrary to the record of the court below, whereas the appeal, as noticed above, was barred by limitation and, therefore, the petitioner-judgment debtor could not obtain the stay in view of the provisions of Order 41 Rule 3A CPC. He further submits that the appeal has now been dismissed vide judgment and decree dated 28.7.2015 and at the best, the petitioner would have an independent remedy to challenge the judgment and decree, if need be. He also submits that the execution application for seeking execution of the judgment and decree

dated 11.3.2015 was filed on 15.4.2015 and on the adjourned date, i.e., 28.4.2015, the judgment-debtor appeared and sought time and kept on seeking time on 5.5.2015, 11.5.2015, 25.5.2015, 28.5.2015 and finally on 1.7.2015 and when he failed to hand over the possession, the Court passed the impugned order. He further submits that as per the provisions of Order 21 Rule 22 CPC, no notice is required to be served upon the judgment-debtor in case the decree within two years is to be executed. He also submits that during the process of execution, possession of the property has been taken, however, the execution application is pending, vis-a-vis for recovery of mesne profits. There is no illegality and perversity in the impugned order and the same has been passed in accordance with law.

I have heard the learned counsel for the parties and appraised the paper book.

Noticing the rival contentions of the parties and as well as the impugned order, it is a matter of record that the petitioner-judgment debtor had taken the matter in a most casual and callous manner. Had he been aggrieved by the findings rendered in the judgment and decree dated 11.3.2015, the appeal could have been filed within the period of limitation and he would have availed the remedy of interim protection subject to any condition. Having not done so, the petitioner-judgment debtor has adopted the procedure by filing the objections in the execution application on 1.7.2015. The objection petition, in my view, was an attempt to delay the execution of the judgment and decree as the judgment-debtor has failed to obtain any interim protection in the matter, the appeal being barred by limitation and in view of Order 41 Rule 3A CPC, in the absence, the lower

Court could not have passed any order of stay. Since the possession has already been taken, no cause of action survives in the present petition and the petitioner would be at liberty to challenge the judgment and decree of the trial Court and in case he succeeds, the remedy is provided for seeking restitution of the property.

There is no illegality and perversity in the impugned order.

The civil revision stands dismissed.

August 28, 2015
ramesh

(AMIT RAWAL)
JUDGE