

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 7247 of 2013 (O&M)
Date of decision: 22.4.2015

Harbhajan Singh

.. Petitioner

v.

Ranjit Kaur

.. Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. A. K. Walia, Advocate for the petitioner.

Mr. D. D. Bansal, Advocate for the respondent.

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Rajesh Bindal J.

Challenge in the present petition is to the order dated 31.8.2013, passed by the learned court below, whereby the application filed by the respondent on 2.6.2011 for restoration of the execution application, which was dismissed in default on 28.5.2011, was allowed.

Learned counsel for the petitioner submitted that application for restoration was initially dismissed by the executing court on 9.2.2012. In appeal filed by the respondent, the appellate court, while sitting aside the order, remanded the case back to the executing court for decision of the application after framing of issues. It was thereafter that the application was decided by the learned court below. Though a plea was sought to be raised by the respondent that she was not keeping good health, however, no evidence was led. She did not appear in court. Only her power of attorney appeared. His statement cannot be read in evidence, hence, the restoration application deserved to be dismissed.

On the other hand, learned counsel for the respondent submitted that the execution was filed by the respondent of a decree passed

in her favour by the Civil Court on 8.12.1992, whereby the petitioner was, *inter-alia*, restrained from encroaching a public street. Appeal against the same was dismissed by the first appellate court on 19.1.1996. As the decree was being violated by the petitioner, the respondent filed COCP No. 717 of 1997 in this court, which was disposed of on 23.11.1998 with the observation that the petitioner therein has alternative remedy of approaching the court under Order 21 Rule 32 CPC. Thereafter, the execution petition was filed, which was dismissed in default on 28.5.2011. The application for restoration was filed on 2.6.2011. The same was dismissed by the executing court on 9.2.2012. In appeal, vide order dated 2.11.2012, the matter was remanded back to be heard and decided on merits. The learned executing court while considering the age of the respondent being 85 years and the statement made by her power of attorney holder, namely, her son-in-law, allowed the application and restored the execution petition. The petitioner has raised all types of technical pleas just with a view to avoid action against him for violating the decree of injunction passed against him. There is no illegality in the order passed.

Heard learned counsel for the parties and perused the paper book.

The case in hand is an example of use of all tools by a party to the litigation to delay the process. The fact that there is a decree of injunction passed against the petitioner is not in dispute. The allegation of the respondent is that injunction has been violated as the petitioner had encroached upon the public street. This is the issue to be gone into. When the execution was listed on 28.5.2011, on account of non-appearance of the counsel, the same was dismissed in default. The application for restoration was filed immediately on 2.6.2011. The ground taken was that the respondent, being 83 years of age, was not keeping good health and could not come to the court on that date and the counsel was busy in another court. The matter on such a trivial issue is pending for the last about 5 years. All types of technical pleas are being raised. The substance is not being gone into. The fact that the respondent is 85 years of age is not in dispute. Her son-in-law has appeared in court as her power of attorney stating this

fact. It was sought to be disputed by the petitioner that no medical record was produced. It cannot be lost sight of the fact that the respondent is 85 years of age and there are some health issues, at this advanced age. None should be so insensitive to that. Nothing has been pointed out from the record that appearance of the respondent was required in court on that date. The ground made in the application was that even the counsel was busy in another court. Under these circumstances, in case the court below has accepted the application for restoration of the execution petition, there is no illegality in the order passed. The petition being misconceived is dismissed with cost of ₹ 5,000/-, which shall be paid to the respondent against receipt. The court below is directed to dispose of the execution petition within six months from the date of receipt of copy of the order.

(Rajesh Bindal)
Judge

22.4.2015
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