

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.74 of 2015 (O&M)
Date of decision:07.01.2015

Sunita

....Petitioner

Versus

Amit Kumar & others

.....Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr.M.P.S.Chandel, Advocate, for the petitioner.

G.S.Sandhawalia J.(Oral)

Challenge in the present revision petition is to the order dated 09.12.2014 (Annexure P9), passed by the Executing Court, whereby the warrant of possession has been ordered to be prepared and the Bailiff has been directed to deliver the vacant possession of the shop in dispute. The concerned SHO has also been directed to give necessary assistance in handing over the possession of the house in dispute to the decree holder, as per the judgment and decree dated 31.07.2010 (Annexure P1). Accordingly, the Execution Petition has been allowed.

The petitioner herein is defendant No.1-A, against whom the decree had been passed wayback 4 ½ years earlier. Vide the said decree, the Trial Court directed handing over the vacant possession of the suit property which was shown in blue colour marked with letters 'QRMP'.

Counsel for the petitioner has vehemently submitted that proper service was never effected upon the petitioner-defendant No.1-A and thereafter, publication was resorted to. The *ex parte* order was passed on 18.03.2010 (Annexure P5) and thereafter, the judgment was passed on 31.07.2010.

Admittedly, the petitioner has a remedy of setting aside the *ex parte* decree under Order 9 Rule 13 CPC. The Executing Court is only ensuring that the decree is complied with and is not to adjudicate whether the service is validly effected or not. The petitioner has a remedy in law of approaching the Court concerned for setting aside the *ex parte* decree.

In such circumstances, there is no scope for interference in the present revision petition and the same is hereby dismissed with the aforesaid liberty.

07.01.2015

(G.S.SANDHAWALIA)
JUDGE