

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.2725 of 2016 (O&M)
Date of decision:21.04.2016

Amarjit Singh

... Petitioner

Vs.

Bhagwant Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Present:- Mr. D.S.Gurna, Advocate
for the petitioner.

AMIT RAWAL J. (Oral)

The petitioner-judgment debtor is aggrieved of the dismissal of the objections, whereby, the respondent-plaintiffs had sought the execution of the judgment and decree dated 22.04.2009 passed in civil suit No.RT-1261 of 24.01.2003.

Mr. D.S.Gurna, learned counsel appearing on behalf of the petitioner-judgment debtor submits that the aforementioned decree has been challenged by filing the independent suit bearing No.2249 of 2014 as the decree had been obtained by playing fraud and misrepresentation and as per the provisions of Order 21 Rule 29 of the Code of Civil Procedure, the decree is liable to be stayed. In support of his aforementioned contentions, he has referred the judgment of the Hon'ble Supreme Court in **Shaukat Hussain @ Ali**

Akram and others vs. Smt. Bhuneshwari Devi (dead) by LRs and others 1972(2) SCC 731 and thus, urges this Court to stay the execution of the judgment and decree till the adjudication of the subsequent suit.

I have heard learned counsel for the petitioner-judgment debtor and appraised the paper book.

The decree dated 22.04.2009 reads thus:-

“Suit for possession by way of demolishing the illegal construction raised by the defendants in the land of the plaintiff, measuring 10 marlas comprising in khasra No.4/7/3/13 situated in revenue estate of village Beer Dandrala, Tehsil Dera Bassi, District Patiala.

Plaint presented on 24.1.03/1.5.2006

Value of the suit for purpose of Court fee and jurisdiction is Rupees 180/-.

This suit is coming on 22nd day of April, 2009 for final disposal before me (Sh. Rakesh Kumar, PCS, Addl.Civil Judge, Senior Division, Dera Bassi) in the presence of Sh. Manmohan Singh, Advocate, counsel for the plaintiff and Sh. J.S.Chauhan, Advocate, counsel for the defendants. It is hereby ordered that the suit of the plaintiff succeeds and a decree for possession by way of demolishing of the illegal construction raised by the defendants in the suit land measuring 10 marlas

comprising in khasra no.4//7/3/13 situated in the revenue estate of village Beer Dabdrala Tehsil Dera Bassi, District Patiala is order to be passed in favour of the plaintiff and against the defendants.

Memo of costs

	<i>Plaintiff</i>	<i>Defendant</i>
1. Stamp for plaint	10.00	-
2. Stamp for Power	1.25	1.25
3. Stamp for Process Fee	2.00	-
4. Counsel's fee	CNF	CNF
5. Misc.Fee	1.25	-
Total	14.50	1.25

Given under my hand and the seal of the Court on this 22nd day of April, 2009.

*sd/-
Add.Civil Judge (SD)
Dera Bassi.”*

It is a matter of record that the aforementioned decree has attained finality as the petitioner-judgment debtor lost upto this Court. It is only after the dismissal of the Regular Second Appeal, subsequent suit bearing No.2249 of 2014 (Annexure P-3), has been filed. The ratio decidendi culled out by the Hon'ble Supreme Court in the **Shaukat Hussain's case** would not apply to the present case as in aforementioned case, plaintiff had obtained an ex parte decree by playing fraud and misrepresentation and it is in these circumstances,

the provisions of Order 21 Rule 29 of the Code of Civil Procedure were pressed. However, the present case is not similar in nature as noticed. Rather in my view, it is an attempt to delay the execution of the judgment and decree as the petitioner was defendant in the aforementioned suit and contested the same tooth and nail. Nothing prevented the petitioner to set up a counter claim in the aforementioned suit vis-a-vis the relief sought in the subsequent suit. Even otherwise, apparently, in the present suit, the matter/issue involved as per the provisions of Section 11 of the Code of Civil Procedure, directly and substantially are same, therefore, the objections have rightly been dismissed.

In view of the aforementioned observations, I do not intend to differ with the findings rendered in the impugned order. Accordingly, the revision petition stands dismissed.

(AMIT RAWAL)
JUDGE

April 21, 2016
savita