

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.6001 of 2016 (O&M)
Date of decision:19.12.2016

Saroj

....Petitioner

V/S

Surinder and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Arun Yadav, Advocate for the petitioner.

Mr. Bhisham Kumar Majoka, Advocate for respondents No.1 to 5.

DARSHAN SINGH, J. (Oral)

The present revision petition has been preferred against the order dated 02.08.2016 vide which the petitioner/DH has been directed to lead the evidence first.

2. Learned counsel for the petitioner contended that the decree for injunction was passed on the basis of the compromise between the parties. Thus, he contended that as the decree was admitted so, the learned Executing Court had rightly directed the JD/respondents to lead the evidence first to prove the objection but vide impugned order, the previous order has been wrongly reviewed.

3. On the other hand, learned counsel for the respondents contended that

the petitioner has filed the execution under Order 21 Rules 11 and 32 CPC for executing the decree for permanent injunction. He contended that it was for the DH to establish her right for getting the decree executed.

4. I have duly considered the aforesaid contentions.

5. On the basis of pleadings of the parties, the learned Executing Court has framed the following issues vide order dated 19.7.2016:

“1. Whether the present DH is legally entitled to get the judgment and decree dated 01.12.2008 executed as prayed for on the grounds mentioned in the execution petition? OPP

2. Whether the decree dated 01.12.2008 is not legally executable against the JDs? OPD

3. Whether the present execution is not legally maintainable against the JDs? OPD

4. Relief.”

6. In order to seek the execution of decree for injunction, the DH has to show that the JD had an opportunity of obeying the decree but has wilfully failed to obey the same and then the decree is sought to be enforced by detention of the JD in civil prison or by attachment of his property. So, it is for the DH to show that the JD has wilfully failed to obey the decree and for that purpose, the DH has to first lead the evidence.

7. Even the issues framed by the learned Executing Court shows that the

burden to prove issue No.1 was upon the DH. So, obviously DH should have directed to first lead the evidence. The learned Executing Court has just corrected its mistake by passing the impugned order dated 2.8.2016 directing the DH to first lead the evidence. Learned counsel for the petitioner states that the learned Executing Court has not framed the proper issues as required under Order 21 Rule 32 CPC. For this, the DH is at liberty to move the requisite application to the learned Executing Court for framing the proper issues.

8. Thus, the impugned order does not suffer from any illegality. The present revision petition being devoid of merits is hereby dismissed.

December 19, 2016

ps

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.