

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

**Civil Revision No.6812 of 2016 (O&M)
Date of Decision: 07.10.2016**

Surinder Singh

.....Petitioner

Vs

Balwant Singh (dead) through LRs and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Aayush Gupta, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed order dated 13.09.2016 passed by Civil Judge (Jr. Divn.) Ludhiana whereby petition under Order 21 Rule 32 CPC filed by the petitioner was dismissed.

[2]. Petitioner filed a civil suit No.122 of 15.05.1993 against the respondents for declaration and permanent injunction in respect of the suit land. Similarly, the respondents also filed civil suit No.216 of 10.05.1993 against the petitioner for permanent injunction restraining the petitioner from interfering and encroaching upon the land and also restraining from installing a door in the wall. Both the aforesaid civil suits were clubbed and were decided vide common judgment. Civil suit filed by the

petitioner was decreed and the civil suit of the respondents was dismissed. It was concluded in the suit filed by the petitioner that the petitioner was owner in possession of the property as shown in yellow colour in the site plan Ex.DW-4/A. Permanent injunction was also granted against the respondents, restraining them from interfering in the possession of the petitioner. The judgment and decree was passed by the trial Court on 06.10.2006. The respondents filed civil appeals before the lower Appellate Court and the same were dismissed by the lower Appellate Court on 25.08.2008. Thereafter Regular Second Appeals were filed before this Court, however nothing was traced viz-a-viz. the listing of the appeals as per knowledge of the petitioner.

[3]. Petitioner filed petition under Order 21 Rule 32 CPC for the violation of the decree in question by the respondents. Trial Court dismissed the said petition on the premise that the petitioner has failed to prove the date, time and manner of interference caused by the respondents in order to violate the judgment and decree passed by the trial Court. Merely because the defendant stated in his cross-examination that he was not bound down to comply with the order, does not mean that the judgment and decree was violated by him, at any particular juncture. Since the petitioner not specified any particular

incident with reference to date, time and manner of occurrence in the petition, therefore, the cause of action for filing petition under Order 21 Rule 32 CPC cannot be advanced.

[4]. For attracting action in execution of judgment and decree under Order 21 Rule 32 CPC, violation has to be proved by the decree-holder. Mere passing reference to say that the judgment-debtor was not bound by the decree cannot be taken to be an instance of alleged violation. It is true that, even if, there is no violation of the decree as on date in terms of specific instance, that itself will not preclude the decree-holder from taking action in terms of Order 21 Rule 32 CPC at a subsequent stage, when such an occurrence takes place. The decree-holder cannot be compelled to file another suit so as to seek fresh restraint order against the judgment-debtor.

[5]. Explanation was added to sub-Rule (v) of Rule 32 CPC by way of amendment w.e.f. 01.07.2002. It has been declared that the expression “the act required to be done” covers prohibitory as well as mandatory instructions. The intended object was to give full effect to the decree. In **Gurcharan Singh and another vs. Gurudwara Shri Singh Sabha (Regd.) Sector 19-D, Chandigarh, 2004(2) PLR 330**, this Court after considering recommendations of the Law Commission on the

point in issue and the explanation added to Order 21 Rule 32 CPC by way of amendment observed in the following manner:-

“15. It is in view of the afore-mentioned historical perspective that the order dated 23.2.2004 passed by the Civil Judge has to be examined. The expression 'act required to be done' has, been extended to prohibitory as well as mandatory injunctions. The view taken by the Full Bench of Delhi High Court has been treated as a narrower view because that was a case, in which the decree against the licensee was to quit and vacate the premises but the High Court by taking a narrower view expressed its inability to invoke Order 21 Rule 32(5). Therefore, the question posed by the Law Commission, which led to the recommendation for adopting wider view has been accepted by inserting explanation to Sub-rule (5). The decree-holder is not required to file another suit when he has already acquired a decree in his favour by spending much time and expense. The Court, therefore, would be fully competent to direct that the act required to be done may be done so far as practicable either by the decree holder himself or by some other person appointed by the Court at the cost of judgment-debtor. In the instant execution of the decree for mandatory injunction, where the possession is sought from a licensee. The aforesaid order is consistent with the spirit of law and the explanation added as per the recommendation made by the Law Commission. The direction to vacate the premises situated in the Gurudwara Sahib where the judgment-debtor petitioners were allowed to stay being the sewadars is another form and method to direct hand over of possession. Tweedledes is Tweedledum. It can mean

nothing else except the handing over of possession and, therefore, the wider view as suggested by the Law Commission has to be followed because it serves the ends of justice. The decree cannot be defeated by raising technical objections. It is well settled that technicalities of law should be construed to advance justice and not to defeat justice. With utmost defence to the Id. judges, I am of the view that the ratio of the judgment of the Full Bench of Delhi High Court in Sarup Singh's case (supra) stands considerably watered down by Explanation added to Subrule 5 of Rule 32 of Order 21. The wider view preferred by Allahabad High Court in Harihar Pandey's case (supra) has rightly held that the decree holder cannot be compelled to file another suit for it would multiply litigation which course public policy would discourage. Courts cannot be party to the illegal designs of a Judgment debtor who wishes to carry on with his illegal possession. The ground realities propagated by Realist School of Thoughts led by Jurist like Karl Llewellyn must dawn on the parties to litigation and substantial justice must be done. Therefore, I do not find any ground to interfere with the order passed by Civil Judge. The petition is liable to be dismissed. For the reasons recorded above, this petition fails and the same is dismissed."

[6]. The resultant effect would come to the effect that the decree-holder cannot be compelled to file another suit for it would multiply litigation which course public policy would discourage.

[7]. It is observed that as on date no action is warranted

under Order 21 Rule 32 CPC, but that does not preclude the decree-holder from initiating the proceedings, if violation of the decree takes place in future, for which decree-holder cannot be compelled to file another suit for seeking fresh restraint order against the judgment-debtor. There are many reasons for such indulgence to the decree-holder.

[8]. In view of aforesaid, I am of the view that at this juncture, no interference is called for in the impugned order. This revision petition is accordingly disposed of.

October 07, 2016

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**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether reportable

Yes / No