

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

-.-

CR 131 of 2015 (O&M)

Date of decision: 08.09.2017

Baldev Raj

..... Petitioner

Versus

Amar Nath

.....Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Vaibhav Narang, Advocate
for the petitioner

Mr. K S Cheema, Advocate
for the respondent

-.-

Rekha Mittal, J.

The present petition directs challenge against order dated 17.11.2014 (Annexure P6) passed by the Civil Judge (Junior Division) Amritsar, whereby application for execution has been dismissed.

Counsel for the petitioner has submitted that the petitioner filed a suit for possession by way of specific performance of agreement to sell dated 18.06.1994 in respect of property No. 4844/18, situated in Gali No. 4, Dam Ganj, Amritsar and the same was decreed on 17.09.1999. The petitioner/decreed holder filed an application for execution of the decree in pursuance whereof sale deed was executed in favour of the petitioner and warrant of possession was issued by the executing Court but the same was not executed. The execution application was dismissed in default vide order dated 29.04.2008 (Annexure P2). The petitioner filed another execution

application dated 20.04.2010 to recover possession of the demised property wherein the respondent/JD filed objections (Annexure P4). The executing Court committed a serious error rather illegality by recording findings in para 7 of the impugned order that the execution application is time barred and barred by operation of doctrine of res-judicata, therefore, dismissed the same. It is argued with vehemence that as earlier execution application was dismissed in default due to non-prosecution vide order dated 29.04.2008 and not on merits, order dated 29.04.2008 cannot operate to constitute res judicata in the later execution proceedings.

Another submission made by counsel is that as the decree was passed on 17.09.1999 and the same can be executed within a period of twelve years, therefore, the second execution application filed on 20.04.2010 is clearly within the period of limitation.

Counsel representing the respondent would urge that as the respondent filed objection under Order 21, Rules 11, 36, 96 to 99 and 101 read with Section 151 of the Code of Civil Procedure (in short, CPC), appropriate remedy available to the decree holder to challenge the impugned order is to file an appeal in view of the provisions of Order 21 Rule 103 CPC. According to counsel, the revision petition is not maintainable in the eye of law.

I have heard Counsel for the parties and perused the paper book particularly the order impugned.

The objections (Annexure P4) were preferred by the JD. The JD can maintain objections under Section 47 CPC and not under Order 21 Rules 97 onwards. The contention of the respondent with regard to on-

maintainability of the present petition is misconceived and liable to be rejected.

There is no denial that in the previous execution petition, sale deed on the basis of decree dated 17.09.1999 was executed in favour of the decree holder. The executing Court issued warrants to deliver possession of decretal property in favour of the petitioner but at that stage execution petition was dismissed for non-prosecution. There cannot be any dispute about settled position in law that dismissal of a claim for non-prosecution does not amount to adjudication of right of the party on merits and does not constitute res judicata prescribed under Section 11 CPC. Further, the executing Court committed a gross error by upholding plea of the respondent that the executing petition filed in April 2010 to execute decree dated 17.09.1999 is barred by limitation despite noticing that the prescribed period of limitation is 12 years under the Limitation Act, 1963. In this view of the matter, the order passed by the executing Court is the result of complete non application of mind or total lack of knowledge on the part of Presiding Officer. The manner in which the Court has proceeded to dismiss the execution for delivering possession shows the officer in poor light.

Before parting with this order, the Court has a serious concern and anguish to express that because of a wrong order, the decree holder has been deprived of his right to get possession of the decretal property for a period of about three years. The Officer concerned is directed to be careful in future while interpreting the provisions in law.

A copy of this order be sent to the Officer concerned at his present place of posting through the concerned District Judge.

For the foregoing reasons, the petition is allowed, impugned order is set aside with a direction to the executing Court to proceed with the execution in accordance with law. The executing Court would put its best efforts to ensure that the decree is executed without any further delay.

(Rekha Mittal)
Judge

08.09.2017
mohan bimbra

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No