

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.2117 of 2017 (O&M)

Date of decision: 20.04.2017

Balbir Singh

... Petitioner

Vs.

Suman Rani and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Aseem Kataria, Advocate
for the petitioner.

RAMESHWAR SINGH MALIK, J. (ORAL)

CM-7420-CII-2017

Applicant seeks permission to place on record copy of the order dated 27.03.2017 passed by the learned Additional District Judge as Annexure P-8 and also seeks exemption from filing certified copy thereof.

After hearing the learned counsel for the applicant, instant application is allowed, as prayed for.

CM stands disposed of.

CR-2117-2017

Present revision petition, at the hands of the judgment-debtor, filed under Article 227 of the Constitution of India, is directed against the order dated 14.02.2017 (Annexure P-5) and also the order dated 16.03.2017 (Annexure P-6), whereby the learned executing Court has dismissed the objections filed by the petitioner/judgment-debtor to the execution application of the decree-holder

and as a consequence thereof, warrant of possession was issued, vide order dated 16.03.2017.

Heard learned counsel for the petitioner.

It is a matter of record that suit of the plaintiff-respondent No.1 for possession by way of specific performance of agreement to sell dated 29.05.1995 was decreed ex-parte by the learned trial Court, vide judgment and decree dated 14.11.2002. Decree-holder filed the execution application and in compliance thereof, sale deed No.587 dated 13.05.2003 was registered in the office of Sub Registrar in favour of the decree-holder. Pursuant to the appropriate orders passed by the learned executing Court, decree-holder withdrew the execution application, however, reserving her right to file a fresh execution application for getting possession of the suit property, vide order dated 29.11.2010 (Annexure P-1). It seems that in the meantime, judgment-debtor filed his application under Order 9 Rule 13 of the Code of Civil Procedure ('CPC' for short) for setting aside the ex-parte judgment and decree dated 14.11.2002.

It is pertinent to note here that exact date of filing of the application under Order 9 Rule 13 CPC is not available on record and learned counsel for the petitioner is also not aware about the said date. However, application of the petitioner under Order 9 Rule 13 CPC was dismissed by the learned Court of competent jurisdiction, vide order dated 04.09.2010. Petitioner filed his appeal, which also came to be dismissed by the learned Additional Judge in default, vide order dated 18.03.2013. Then, petitioner filed an application for restoration of the appeal, but the said application for restoration was also dismissed in default vide order dated 04.05.2015. In the meantime, decree-holder filed an

application for delivery of possession, in compliance of the decree dated 14.11.2002, vide Annexure P-3. Petitioner filed his reply vide Annexure P-4 and his objections came to be dismissed by the learned executing Court, vide impugned order dated 14.02.2017 (Annexure P-5). As a consequence of the order dated 14.02.2017, warrant of possession came to be issued vide order dated 16.03.2017. Hence this revision petition at the hands of the judgment-debtor.

Having heard the learned counsel for the petitioner at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that petitioner does not seem to be a bonafide litigant. He did not take due interest in the litigation to defend himself at any relevant point of time. Present one was the natural result of the negligence on the part of the petitioner.

Once the sale deed has already been executed in favour of the decree-holder and that too on 13.05.2003 by order of the Court, she would certainly be entitled for taking possession of the suit land, because there is no stay in favour of the petitioner from any Court of competent jurisdiction. Having said that, this Court feels no hesitation to conclude that the learned executing Court was well within its jurisdiction to pass the impugned orders (Annexures P-5 and P-6) and the same deserve to be upheld.

As noticed hereinabove, application of the petitioner under Order 9 Rule 13 CPC had been dismissed long back. His appeal also came to be dismissed in default and thereafter, even his application for restoration of the appeal has also been dismissed in default, which shows that the petitioner had been negligent at every relevant point of time, as if he was not at all interested

in pursuing the litigation. In this view of the matter, decree-holder cannot be made to suffer and the decree has to be executed as it is. No fault can be found with the orders passed by the learned executing Court, because no error of law has been committed by the learned executing Court, while passing the impugned orders (Annexures P-5 and P-6) and the same deserve to be upheld, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the revision petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, present revision petition stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

20.04.2017

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No