

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.6792 of 2017 (O&M)
Date of decision: 03.10.2017

Kuldeep Chand

... Petitioner

Vs.

Hukam Chand and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Pawan Kumar Sharma, Advocate
for the petitioner.

RAMESHWAR SINGH MALIK, J. (ORAL)

It is the judgment-debtor, who is in civil revision petition, filed under Article 227 of the Constitution of India, against an order dated 07.09.2017 passed by the learned executing Court, whereby the objections filed by the petitioner were dismissed and he was directed to ensure strict compliance of the Civil Court decree, which had already attained finality against him.

Heard learned counsel for the petitioner.

It is a matter of record that the judgment and decree dated 31.03.2010 had already attained finality against the petitioner/judgment-debtor. He had more than one opportunities to obey the said decree passed by the learned Court of competent jurisdiction. The learned executing Court has made very strong observations against the petitioner about his misconduct and also glaring misuse of process of law by him, for violating the decree dated

31.03.2010. However, still showing leniency in favour of the petitioner, the learned executing Court thought it appropriate not to send the judgment-debtor/petitioner behind the bars, but directed him to ensure strict compliance of the decree, by passing the impugned order. Petitioner is still feeling dissatisfied and because of that reason, he has approached this Court by way of instant civil revision petition.

Before proceeding further, the relevant observations made by the learned executing Court, at pages 16-17 of the paper book, which deserves to be noticed herein, read as under: -

“I have heard the rival contentions and have perused the material on record. This Court is of considered opinion that the judgment debtor has disobeyed the judgment and decree of ld. Civil Judge (Jr. Division) Ex.A-1. He has further flouted the judgment and decree of ld. Appellate Court with impunity. Such was the audacity of the judgment debtor that he installed a new gate in the passage in question to restrain the decree holder from using the passage in question from the front side. The judgment of ld. Civil Judge (Jr. Division) Ex.A-1 was dated 31.03.2010 whereas the violation of the said judgment and decree was dated 24.07.2010. It is a notorious fact qua the civil litigation in India that the execution of a judgment and decree is the most cumbersome task. Such judgment debtors who have no deterrence qua the violations of judgment and decree have created such paradigms. The said finding has been made on the basis of DDR Ex.PX which shows that on 24th of July 2010 there

was fair fresh installation of gate by the judgment debtor. The police did not get into the said controversy due to the pendency of civil litigation between the parties. Ld. counsel for the objector did not appreciate the fact that in judgment Ex.R4 ld. Appellate Court at para 18 had affirmed that the passage to the extent of 31/2 feet wide was left for the use of father of the decree holder apparently for going to the main road abutting the front option on the northern side. The decree of the ld. Civil Judge (Jr. Division) was not set aside qua the said fact. There is no point of dispute qua the fact that the height of the passage in question has been increased by the judgment debtor. The said height cannot be ordered to be reversed. However, the solution for the said problem can be made out without foisting any expenses on the judgment debtor. The only hindrance to the user of the passage in question is the installation of gate and the non-having of slope for entry of two-wheelers. The judgment debtor is ordered to dismantle/remove the gate in question at the entry from the front side at his own expenses. The said order has been made due to the fact that having the gate at that said point would always create hindrance or point of discord between the parties qua the locking of the same. The said hindrance can be easily removed from the entry side of front passage. Alibi of security cannot be taken because the scrutiny of the judgment debtor and the decree holder will be at parity. The gate at the front portion is a ploy by the judgment debtor to do indirectly what he cannot do directly.

Thus in view of above discussion, this Court finds no merits in the objections of the judgment debtor and issues No.1 & 2 are decided against the judgment debtor and the objections are accordingly dismissed. Instead of sending the judgment debtor behind bars; the judgment debtor is allowed to mend his ways by dismantling/removing the gate at the front portion. The said dismantling shall be done by the judgment debtor on his own expenses. The decree holder will contribute by making the slope at the gate and the judgment debtor will not be foisted with the costs of making the slope at the front gate. However the judgment debtor shall not interfere in the construction of the slope at the front gate. Compliance by judgment debtor be made by 22.09.2017. It is clarified that there shall be no notice necessary for the coercive measures against the judgment debtor in case of non-compliance of the present order. Now to come up on 22.09.2017 awaiting compliance by judgment debtor.”

When confronted with the abovesaid categoric and strong observations made by the learned executing Court, learned counsel for the petitioner had no answer, except to say that the petitioner did not violate the judgment and decree dated 31.03.2010. This oral and simple assertion on the part of the petitioner/judgment-debtor cannot be preferred over and above the abovesaid observations made by the learned executing Court. Having said that, this Court feels no hesitation to conclude that the learned executing Court was well within its jurisdiction to pass the impugned order and the same deserves to be upheld.

It goes without saying that nobody is above the law. Even the law makers are also governed by the law. A bare perusal of the impugned order passed by the learned executing Court would show that the petitioner has no respect for the decree in question and also the justice delivery system. Such a litigant, who has no respect for the law and justice delivery system, does not deserve any kind of sympathy from the Court as well. Once the decree has attained finality against the petitioner, he was bound to obey the same in its true letter and spirit. That is what has been sought to be done by the learned executing Court and rightly so, by passing the impugned order. For his willful disobedience of the decree in question, petitioner could have been sent behind the bars, but the learned executing Court still exercised judicial restraint granting yet another opportunity to the petitioner, so as to ensure meticulous compliance of the Civil Court decree dated 31.03.2010, by passing the impugned order. Under these undisputed circumstances of the case, it can be safely concluded that the learned executing Court committed no error of law, while passing the impugned order and the same deserves to be upheld, for this reason also.

During the course of hearing, learned counsel for the petitioner could not point out any patent illegality or perversity in the impugned order, which may warrant interference at the hands of this Court, while exercising its revisional jurisdiction under Article 227 of the Constitution of India. In fact, the impugned order passed by the learned executing Court has been found based on sound reasons and the same deserves to be upheld, for this reason as well.

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 since no illegality or perversity has been found in the impugned order, the same deserves to be upheld. The revision petition having been found wholly misconceived, bereft of merit and without any substance, must fail. No ground for interference has been made out.

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

[RAMESHWAR SINGH MALIK]
JUDGE

03.10.2017
vishnu

Whether speaking/reasoned Yes/No

Whether reportable Yes/No