

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CR No.8173 of 2017(O&M)

Date of Decision:-06.12.2017

Amrik Singh.

.....Petitioner.

Versus

Nand Lal & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Deepak Verma, Advocate for the Petitioner (tenant no.3).

JASWANT SINGH, J.

Petitioner (tenant no.3) is in revision directed against the impugned orders dated 2.10.2017, 02.11.2017 and 06.11.2017 (**P-9, P-11 & P-12**) respectively whereby, the warrants of possession qua the demised premises stands executed and consequently, the petitioner has been dispossessed.

Learned Counsel for the petitioner has argued that without even issuing notice to the petitioner (tenant), the Executing Court straightway issued warrants of possession which is contrary to the principles of natural justice as notice was required by the Executing Court to be issued to the petitioner (tenant)-judgment debtor before proceeding with the Execution proceedings. He has further argued that in pursuance to the said order, the warrants of possession have also been executed and the petitioner stands dispossessed illegally against law. It is submitted that he has already filed

an appeal against the order of eviction dated 3.08.2017, however, the Executing Court has not even taken the said aspect into consideration while passing the impugned orders. Thus prayer has been made for restoring the possession to the petitioner (tenant) by setting the impugned orders passed by Executing Court in execution proceedings. In support of his contentions he has relied upon 2012(2) RCR (Civil) 193 Madan Lal Vs. Nirmal Kumari & Ors., 2003 AIHC 3488 Vasant Rao Vs. E. Raj Reddy & 1983 PLR 394 Surjit Singh & Ors. Vs. Kartar Kaur & Anr.

After hearing learned Counsel for the petitioner and perusing the paper book, this Court is of the considered view that the present petition is devoid of any merit and same deserves to be dismissed.

The entire dispute revolves around the fact as to whether the Executing Court has the power to straightway issue warrants of possession on the day when the execution application is presented or not. For the said purpose it would be apposite to reproduce Order 21 Rule 22 of CPC which reads as under:-

22. Notice to show cause against execution in certain cases.-

- (1) Where an application for execution is made—*
- (a) more than two years after the date of the decree, or*
- (b) against the legal representative of a party to the decree or where an application is made for execution of a decree filed under the provisions of section 44A, or*
- (C) against the assignee or receiver in insolvency, where the party to the decree has been adjudged to be an insolvent).*

the court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him:

Provided that no such notice shall be necessary in consequence of more than two years having elapsed between

the date of the decree and the application for execution if the application is made within two years from the date of the last Order against the party against whom execution is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment debtor, if upon a previous application for execution against the same person the court has ordered execution to issue against him.

(2) Nothing in the foregoing sub-rule shall be deemed to preclude the court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if, for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the end of justice.

Punjab, Haryana and Chandigarh has also made its own amendment which is as follows:-

Add the following at the end of the rule:

‘Failure to record such reasons shall be considered an irregularity not amounting to a defect in jurisdiction.’

As per Rule 22 notice is mandatory when an application for execution has been made more than two years after the date of decree. However, it is clear from the wording of this Rule that even such a notice can be dispensed with in cases where proviso to Sub Rule 1 are attracted. It is also pertinent to note that under Sub Rule 2, discretion is conferred on the Court to issue process in execution of a decree without issuing prescribed notice for the reasons to be recorded if it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice.

Thus, the plain reading of Rule 22 CPC makes it clear that nothing has been provided, either expressly or by necessary implication that notice is required to be issued where an execution petition is filed within two years from the date of decree. Rule 22 CPC exclusively deals with the case where notice is mandatory. Thus, it is open for the Court to execute the decree without issuing any notice. However, it does not mean that notice to the respondent in the Execution is prohibited. It is always open

for the Executing Court to exercise its discretion in the manner it deems appropriate.

In the present case, it is apparent that the Executing Court did not feel it necessary to issue notice to the petitioner (tenant) as the execution was filed within two years of the eviction order. This order, in the opinion of this Court, does not suffer from any jurisdictional error so as to warrant interference from this Court.

As far as the argument of the learned Counsel that appeal against the order of eviction is pending before the Appellate Authority, it is but obvious that it is a statutory remedy availed by the petitioner (tenant) which shall be decided by the Authority in accordance with law. In case the Appellate Authority reverses the order of eviction, the Court has the power under Section 144 of CPC to restore back the possession to the tenant.

The judgments relied upon by the learned Counsel for the petitioner (tenant) are not at all applicable to the facts of ht present case. In fact the judgment passed in Vasant Rao's case (supra) supports the observations made by this Court and rather goes against the petitioner (tenant) himself.

In view of the above, finding no merit in the present revision petition, the same is hereby dismissed.

(JASWANT SINGH)
JUDGE

December 06, 2017
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>