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

**Civil Revision No.2114 of 2017
Date of Decision: 05.07.2018**

GURMIT KAUR & ORS

.....Petitioners

Vs

KRISHAN KUMAR & ORS

....Respondents

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

Present: Mr. Dinesh Nagar, Advocate
for the petitioners.

Mr. R.S. Chauhan, Advocate and
Mr. Rohit Sapehiya, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioners have preferred the present revision petition against the order dated 02.02.2017 passed by the Addl. Civil Judge (Sr. Divn.) SBS Nagar.

[2]. This is a case having peculiar background. Respondents filed a suit for specific performance on the basis of agreement to sell dated 07.04.1992 entered into between the parties. The trial Court vide judgment and decree dated 15.10.1997 decreed the suit only to the extent of recovery of earnest money. The said judgment and decree was affirmed in

appeal by the lower Appellate Court on 25.10.1999. While deciding the RSA No.954 of 2000 at the instance of Krishan Kumar, the High Court partially modified the decree to the extent that interest @ 9% per annum would be payable by the defendant/husband of petitioner No.1 to Krishan Kumar from the date of filing of the suit till final realization of the amount. The decree passed by the lower Appellate Court was maintained. It was further ordered that the payment of interest would be made by husband of petitioner No.1 to Krishan Kumar within a period of 60 days with costs throughout. If the payment is not made within the time stipulated, then interest @ 12% per annum would accrue instead of interest @ 9% per annum. The said RSA was dismissed with the aforesaid modification vide order dated 09.02.2015.

[3]. On the other hand, a suit for possession filed by the petitioners was decreed vide judgment and decree dated 15.03.2016 in respect of 24 *Kanals* of land. The judgment-debtors filed objections in the execution of said decree on the ground that the decree passed by the trial Court for recovery of decretal amount along with interest has not been honoured by the petitioners, therefore, proportionate deduction for delivery of possession be made. The executing Court in order to secure repayment of earnest money and interest deemed it appropriate

to issue warrants of possession of land measuring 20 Kanals instead of 24 Kanals.

[4]. The aforesaid procedure has been adopted in order to minimise further litigation between the same parties which originated from common cause of action. Apparently in respect of agreement to sell dated 07.04.1992, suit for specific performance was filed by the respondents which ultimately culminated in passing of decree for recovery of earnest money along with interest. In respect of same suit property, the suit for possession was filed by the present petitioners which was also decreed.

[5]. Learned counsel for the petitioners submitted that the respondents could have filed execution in respect of his claim regarding recovery of earnest money with interest.

[6]. I have considered the submissions made by learned counsel for the parties.

[7]. In pith and substance, the controversy between the same parties is in respect of same land. Firstly the execution for decree for possession is sought to be executed by way of delivery of possession of the suit property. At the same time, the amount of earnest money along with interest has not been paid so far. The executing Court in the interest of justice issued

warrants of possession only to the extent of 20 Kanals of land and the warrants have not been issued for remaining 4 Kanals of land in order to answer the claim of the respondent, who are decree-holder in a suit for recovery along with interest.

[8]. This Court while considering the controversy can take *suo motu* notice of the fact that in order to minimize the litigation between the same parties in respect of same suit property, the course adopted by the trial Court is just and appropriate. In respect of claim regarding *mesne* profits, the suit filed by the petitioners is still pending consideration before the competent Court and the same will be decided in accordance with law.

[9]. The findings recorded in the impugned order dated 02.02.2017 passed by the Addl. Civil Judge (Sr. Divn.) SBS Nagar are based on equitable consideration of entire controversy between the parties and the same needs to be upheld. This revision petition is accordingly dismissed.

July 05, 2018

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**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned Yes/No

Whether reportable Yes/No