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

CR-4286-2018 (O&M)

Date of decision : 14.12.2018

Om Pal and others

... Petitioners

Versus

Guruwar Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Abhinav Sood, Advocate for
Mr. Vikram Singh, Advocate
for the petitioners.

Mr. Deepak Singh Saini, Advocate
for the respondent.

AMIT RAWAL, J.

The present revision petition is directed against the orders dated 29.05.2015 (Annexure P-6) and 17.05.2018 (Annexure P-8), whereby, while dismissing the application under Order 21 Rule 32 of the Code of Civil Procedure filed by the respondent-plaintiff in view of the undertaking suffered by the petitioner-judgment debtor, the trial Court granted the liberty to the decree holder to move an application to the Station House Officer (SHO), for police assistance for ascertaining the facts from the decree holder and implement the judgment and decree.

Learned counsel appearing on behalf of the petitioner-judgment debtor submitted that the aforementioned orders are not in consonance with the provisions of Order 21 Rule 32 of CPC as the procedure has been prescribed therein that in case of any violation of the undertaking, the

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decree holder would have independent remedy as per the provisions of the Act.

Learned counsel appearing on behalf of the respondent-decree holder supports the impugned orders as the trial Court protected the interest of the plaintiff from undergoing rigmarole of second application under Order 21 Rule 32 of CPC, thus, urges this Court for dismissal of the present revision petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submission of Mr. Sood.

It would be apt to reproduce the provisions of Order 21 Rule 32 of CPC as well as the operative part of the impugned order, which read as under:-

"Order 21 Rule 32 of CPC

32. Decree for specific performance for restitution of conjugal rights, or for an injunction.—

(1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced [in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction] by his detention in the civil prison, or by the attachment of his property, or by both.

(2) Where the party against whom a decree for specific performance or for an injunction has been passed is a corporation, the decree may be enforced by the attachment of the property of the corporation or, with the leave of the Court, by the detention in the civil prison of the directors or other

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principal officers thereof, or by both attachment and detention.

(3) Where any attachment under sub-rule (1) or sub-rule (2) has remained in force for 2[six months,] if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold; and out of the proceeds the Court may award to the decree holder such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.

(4) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of 2[six months] from the date of the attachment no application to have the property sold has been made, or if made has been refused, the attachment shall cease.

(5) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the Court, at the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree.

Operative part of the impugned order

As a sequel to findings on the above said issues, the present application under Order 21 Rule 32 read with Section 151 of the Code of Civil Procedure, 1908 for initiating the contempt of Court proceedings is hereby dismissed with costs. It is pertinent to mention here that along with said application request for providing police help was also made by the applicant/decreed holder. However, the respondent/judgment debtor Om Pal has suffered a statement that he will not cause any hindrance/interference in the suit property, but in future if the respondents/judgment debtors would be found at fault by causing interference in the suit property which comes into the

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share of the applicant/decreed holder by virtue of judgment and decree dated 2.12.2004 then the applicant/decreed holder is at liberty to seek police assistance from concerned Station House Officer (SHO) and the concerned SHO after ascertaining the facts from the decreed-holder regarding any kind of hindrance/interference caused by the respondents/judgment debtors would be bound to provide necessary police help to the applicant/decreed holder. Memo of costs be prepared. File be consigned to the record room after due compliance."

A plain and simple reading of the aforesaid provisions does envisage the situation indicated in the impugned order. The trial Court cannot delegate the powers to implement the judgment and decree falling under Order 21 Rule 32 of CPC to the Station House Officer (SHO). The lower Appellate Court being the last court of fact and law, should have appreciated the fact, but also remained as mute spectator.

The impugned orders, under challenge are not sustainable in the eyes of law and the same are hereby set aside.

Liberty is granted to the plaintiff-decreed holder to initiate the proceedings in accordance with law, in case of any deviation or violation of the undertaking.

The present revision petition stands allowed.

14.12.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**