

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.4973 of 2015 (O&M)
Date of decision:10.12.2018

Akbar Ali and another ... Petitioners

Vs.

Noor Mohd. ... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sunny K. Singla, Advocate
for the petitioners.

Mr. Jai Bhagwan, Advocate
for the respondent.

AMIT RAWAL J. (Oral)

The present revision petition is directed against the impugned order dated 16.07.2015, whereby, an application (Annexure P-7) for recalling of the order dated 06.04.2015, whereby, warrant of possession instead of attachment, has been dismissed.

Mr. Sunny K. Singla, learned counsel appearing on behalf of the petitioners submitted that in pursuance to the decree for mandatory injunction dated 03.02.2009, the respondent-plaintiff had filed an execution application under Order 21 Rule 32 CPC. In those proceedings, the trial Court from 08.12.2014 to 23.02.2015, in pursuance to the order of attachment, had been awaiting the report of Ahlmad with regard to implementation of the attachment but suddenly volte-face and vide order 06.04.2015 issued warrant of possession.

Mr. Jai Bhagwan, learned counsel appearing on behalf of the respondent submitted that the Court below had no occasion but to issue warrant of possession as the petitioner-judgment debtors were adopting all dilatory tactics in execution of the decree, aforementioned. The Court can always mould the relief in such circumstances and thus, urged this Court for dismissal of the petition.

I have heard the learned counsel for the parties and appraised the paper book. It would be in the fitness of things to reproduce the zimni orders dated 08.12.2014, 17.01.2015, 23.02.2015 and 06.04.2015. The same reads as under:-

08.12.2014

“Present : Sh. R.R.Jain, Adv for the applicant.
Sh. H.L.Goyal, Adv for respondent/JD.

Sh. H.L.Goyal, Adv has filed power of attorney on behalf of JD. Warrant of attachment not issued to JD by previous Ahlmad. Let, warrant of attachment to JD be issued again for 17.01.2015.

Sd/- (Inderjeet Singh), PCS
CJ(JD), MLK 08.12.2014.”

17.01.2015

“Present : Sh. R.R.Jain, Adv. for applicant.
Sh. H.L.Goyal, Adv. for respondent/JD.

Warrant of attachment received back executed. Perusal of the file shows that instead of issuing warrant of attachment qua property as mentioned in the jamabandi. Ahlmad has issued

warrant of attachment regarding disputed property as shown in the site plan attached with the file. Let, warrant of attachment be issued for 23.02.2015 regarding the portion as shown by letters AMD in the site plan.

At the same time warrant of attachment be also issued of the property mentioned in the jamabandi for the date fixed.

Sd/- (Inderjeet Singh), PCS
CJ(JD), MLK 17.01.2015.”

23.02.2015

“Present Sh. R.R.Jain, Adv. for applicant.
Sh. H.L.Goyal, Adv. for respondent/JD.

Report of Ahlmad seen. Warrant of attachment not received back. Let warrant of attachment be issued for 06.04.2015 qua portion shown by letters ALMD in the site plan.

Sd/- (Inderjeet Singh), PCS
CJ(JD), MLK 23.02.2015.”

06.04.2015

“Present Sh. R.R.Jain, Adv for applicant.
Sh. H.L.Goyal, Adv for respondent/JD.

Report of Ahlmad seen. Perusal of the file shows that instead of filing issuing warrant of possession the warrant of attachment has been issued of which the portion shown by letters ALMD in the site plan was attached. The mistake stands corrected. Let, warrant of possession be issued for 08.05.2015 qua portion shows by letters ALMD in the site plan.

Sd/- (Inderjeet Singh), PCS
CJ(JD), MLK 06.04.2015”

Perusal of aforementioned orders, reveal that the Court had not assigned any reasons in the order issuing warrant of possession which is against the provisions of Order 21 Rule 32 CPC, rather plaintiff should have helped the Court in execution of the decree by getting the warrant of attachment executed but not in the manner and mode as indicated above. Moreover, the Courts below are not powerless to rectify the mistake as and when brought to the notice of the Court through writing or verbal, therefore, such application could not be dismissed.

The impugned order is set aside and order dated 06.04.2015 be treated as warrant of attachment instead of possession.

The revision petition stands allowed.

(AMIT RAWAL)
JUDGE

December 10, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No