

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

**CM no.22321-CII of 2018 in/and
CR no.5536 of 2018
Date of Decision: 19.11.2018**

Lal Chand

...Petitioner

Vs.

Maya Devi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Sanjeev Aggarwal, Advocate
for the non-applicant-petitioner.

Mr. Amit Parashar, Advocate,
for the applicants-respondents.

Amol Rattan Singh, J (Oral)

By Civil Misc. no.22321-CII of 2018, advancement of the date of hearing in the accompanying petition is sought by the applicants-respondents, in view of the fact that a stay is operating in favour of the non-applicant-petitioner.

However, arguments have been addressed by learned counsel in fact in the accompanying petition itself and the petition itself has been taken up for final disposal.

By this petition, the petitioner challenges the order of the executing court (learned Civil Judge, Sr. Divn., Faridabad), dated 14.08.2018, by which the fresh warrants of arrest of the petitioner have been ordered to be issued so as to detain the petitioner-judgment debtor in civil imprisonment, he having failed to comply with the decree issued in favour of the late decree-holder, whose legal representatives now have been impleaded as respondents

no.1 to 5 in the present petition.

Learned counsel for the petitioner submits that the petitioner has handed over the entire suit property except 5 kanals and 6 marlas thereof which was subject matter of a subsequent sale deed executed in his favour by a co-decree holder and therefore that part would no longer be a part of the decree of prohibitory injunction issued in favour of the respondent-decree-holder .

Learned counsel for the respondents, on the other hand, points to the fact that an earlier order passed by the 'executing' court, directing civil imprisonment of the petitioner on the ground of non-compliance of the decree had been passed, which was challenged by way of Civil Revision No.4493 of 2002 that petition having been dismissed by this Court vide an order passed on August 1, 2013 (copy Annexure P-7).

Learned counsel for the applicants-respondents specifically brings to the notice of this Court that in the said order even the issue of purchase of a part of the suit land from co-sharers had been raised, with that contention rejected by this Court, holding as follows:-

“I cannot find this as in any way having the least of semblance to the situation as has arisen in this case. A decree for injunction brought at the instance of coowners against the stranger to the family cannot become unenforceable even if the stranger purchaser comes by the benefit of a purchase of a fractional share of anyone of the sharers. Even an admission by one of the brothers that he had sold the property and delivered possession to him cannot make a difference for such an attempt to enter into possession ought to fended off. The remedy of stranger purchaser from a co-sharer ought to be to file a suit for general partition and seek for specific allotment referable to the vendor's share and not carve out to himself the benefit of what his vendor assigned to him. What may be possible amongst the co-sharers to decide to do in the manner of enjoyment cannot be assumed by

usurpation by a third party stranger. Even the argument that the execution petition does not spell out the date from when the judgment-debtor was making an attempt to interfere cannot assume any significance, for, on the defendants' own showing, he had started laying a claim to a specific item of property as referable to his vendor's share. That contention is good enough to vindicate the decree-holders' plea that their exclusive possession was sought to be disturbed. Further process in execution was justifiably levied and I find no reason to interfere with the same. The order passed already by the court below is confirmed and the revision is dismissed.”

The said order is stated to have been challenged by the petitioner before the Supreme Court by way of SLP no.3002 of 2014, which is also stated to have been dismissed on 27.01.2014, with a review application thereafter filed (bearing no.862 of 2014), also having been dismissed on 22.04.2014.

Despite the above, the petitioner did not vacate the suit land, leading to the passing of the order impugned in the present petition, by which the execution petition filed by the respondents-decree holders has been allowed and the petitioner has been ordered to be sent to civil prison for violation of the judgment and decree dated 27.04.1995.

Notice in the accompanying petition had been issued on 11.09.2018 only because learned counsel for the petitioner had produced on that date a demand draft in the name of the Registrar General of this Court, to prove his *bona fides* with regard to compensation to be paid to the respondents, it also having been noticed by this Court that the petitioner was 75 years old.

On October 3, 2018, on account of non-appearance of the learned counsel for the respondents, the petition had been adjourned to 28.04.2019, with the interim order directed to be continued.

It is upon the aforesaid order having been passed, that the application seeking an advancement of the date of hearing had been filed, with the learned counsel for the parties having addressed arguments in the petition itself today.

Having considered the matter, the fact seen is that despite the decree dated 27.04.1995 having been passed against the petitioner, even 23 years later it has still not been complied with, despite an earlier petition already having been dismissed by this Court, as already noticed.

Consequently, the present petition has to be dismissed.

It is necessary to notice here that despite dismissal of his previous petition, the petitioner was not taken into civil imprisonment, leading to the respondents-decree holders filing another application, seeking that in the face of the decree and dismissal of his objections, the petitioner-judgment debtor continued to violate the dictum of the decree issued, and therefore he should be taken into custody in terms of the earlier order.

That application for no ostensible reason at least, continued to remain pending before the 'executing' court for a long period of time, leading to the respondents-decree holders filing CR no.2156 of 2018 before this Court, which was disposed of on April 02, 2018, with the following directions issued:-

“Prayer in the present petition is for issuance of directions to the Executing Court for restoration of the execution petition bearing No.1 of 2001 and to decide the same in view of the judgments dated 20.08.2002 (Annexure P-2) and 01.08.2013 (Annexure P-3).

Mr. Amit Parashar, learned counsel for the petitioner submitted that the petitioner filed execution application under Order 21 Rule 32 CPC with regard to alleged violation of the aforementioned judgment and decree. The same was allowed, vide order dated 20.08.2002 and the said order was

assailed before this Court, vide CR No.4493 of 2002 which was dismissed. Thereafter, the execution petition was consigned to the record room.

He has also drawn the attention of this Court to the zimni orders (Annexure P-5) commencing from 2014 onwards, wherein the matter is pending adjudication for receiving the file from the record room. Till 2018, the file has not been received.

I have heard the learned counsel for the petitioner and appraised the paper book.

The facts indicated above are not in dispute, i.e., the order dated 20.08.2002, whereby, judgment debtor was directed to remain in civil prison having attained finality vide order dated 01.08.2013 passed in C.R. No.4493 of 2002 (Annexure P-3) but the zimni orders revealed that the execution application consigned to record room had not been received for almost 04 years. It is strange that Civil Judge (Senior Division), Faridabad is taking the matter so lightly and passing the orders in routine manner. The officials working in the office of District and Sessions Judge, Faridabad and under the Civil Judge (Senior Division), Faridabad are required to be sensitized with regard to the urgency of the matter and the Court should also be alive to such situation instead of passing orders in routine manner.

The present revision petition is disposed of with a direction to the Civil Judge (Senior Division), Faridabad to ensure the restoration of the execution application bearing No.1 of 2001 for compliance of the order dated 20.08.2002. The District and Sessions Judge, Faridabad is also directed to look into the matter and submit a report to this Court.”

When the aforesaid order was also not found to be complied with, the case file of that petition was put up by the Registry on August 8, 2018, with this Court having passed the following order on that date:-

“This case file has been put up as per roster, for perusal of the report submitted by the learned District & Sessions Judge, Faridabad, pursuant to an order of this Court (co-ordinate Bench), passed on April 02, 2018.

As per the said report, dated 29.05.2018, the case file of the execution proceeding, by which the judgment-debtor was to be sent to civil imprisonment, was first taken up by the executing Court (Shri Mahesh Kumar, Civil Judge (Senior Division), Faridabad), on 12.11.2014, with the matter adjourned to 25.11.2014 for a report by the Ahlmad, who did not

make any report, with the case then adjourned to 17.12.2014 (on 25.11.2014).

The Ahlmad still not having made any report, it was adjourned to 29.01.2015, for the report of the Ahlmad and for summoning the main file.

The Ahlmads' report then came, to the effect that a copy of the judgment of the lower Court was not supplied (seemingly by counsel for the decree-holder).

Thereafter, despite the said report having been given, it has been observed by the learned District & Sessions Judge in his report, that the matter was unnecessarily adjourned on 7 dates, with the main case file still not received till 27.05.2015.

Thereafter, though on 04.04.2016, 01.11.2016, 30.11.2016 and 20.03.2017, the Ahlmad had further reported that the copy of the judgment of the lower Court was not filed, instead of asking for a copy of the judgment in the main case/particulars of the main case (the decree that was sought to be executed), from the decree-holder, the matter was again adjourned between 22.08.2016 and 22.05.2018, on 14 dates.

The learned District & Sessions Judge, Faridabad, has therefore reported that the trial Court obviously did not make any sincere endeavour to expedite the disposal of the application and dealt with it in a very casual manner, which resulted in avoidable delay in disposal of the application (for execution of the decree).

Though the report is dated 29.05.2018, however, obviously, it seems to have been signed by the learned District & Sessions Judge before 28.05.2018, because the next date of hearing for issuing notice to the judgment-debtor is shown to be 28.05.2018.

Therefore, the current status of the case file after 28.05.2018 be obtained from the learned District & Sessions Judge, Faridabad, by the next date of hearing.

In the meanwhile, a copy of the order of this Court dated April 02, 2018, the report of the learned District & Sessions Judge, as also this order (dated August 08, 2018), alongwith all the zimni orders passed by the executing Court as have been annexed as Annexure P-5 herewith, be sent to the hon'ble Administrative Judges incharge of the Sessions Divisions where S/Shri Mahesh Kumar and Saurab Gusain, former Civil Judges (Senior Division), Faridabad, are posted, the matter having been adjourned by Shri Mahesh Kumar on 7 dates and by Shri Saurab Gusain on 11 dates.

Whether the decree with regard to civil imprisonment of the judgment-debtor was not executed for extraneous consideration, or the

application was adjourned on so many occasions due to sheer callousness, naturally, would be looked into by the hon'ble Administrative Judges, as their Lordships deem best

Adjourned to 10.09.2018.

To be shown in the urgent motion list.”

CR no.2156 of 2018 has now been listed alongwith the present petition.

Thereafter, on September 10, 2018, the following order had been passed:-

“Pursuant to the order of this Court dated 08.08.2018, the report of the learned District & Sessions Judge, Faridabad, accompanied by the report of the learned Civil Judge (Senior Division), Faridabad, addressed to the Registrar General of this Court (both dated 06.09.2018), have been received. A perusal of the latter report shows that now the execution proceedings are being taken up on priority by the learned Civil Judge and that the next date of hearing for execution of non-bailable warrants against the judgment debtor, as also for execution of the warrant of possession through the Tehsildar, Dayalpur, is fixed for September 13, 2018. It has also been stated in the said report that an application under Section 340 Cr.P.C. has also been filed by the decree holder, which is to be listed for the same date. Adjourned to 16.11.2018. The learned Civil Judge seized of the execution proceedings will furnish another report to this Court with regard to the outcome of the proceedings.”

Keeping in view the entire chain of circumstances, especially the fact that the earlier revision petition filed by the petitioner challenging a similar order as is presently impugned, had already been dismissed (duly taking into account the fact that a certain part of the suit land had been purchased by the petitioner by a subsequent sale-deed), and that order had become final, with the SLP filed thereafter also dismissed, there is absolutely no occasion to now entertain this petition, with the decree-holders bereft of the fruits of the decree issued in their favour.

This petition is therefore dismissed, with the petitioner to be taken

into custody in compliance of the impugned order immediately, unless he, within 15 days from today, voluntarily, hands over possession of the remaining part of the suit property, to the respondent decree-holders.

It is made clear that the aforesaid conditional order is being passed only in view of the age of the petitioner and non-compliance thereof would not make entitle him to file any application again before the trial court/executing court.

As such, upon 15 days elapsing, if the petitioner does not hand over possession of the remaining part of the suit property to the respondents-decree holders, he shall be immediately taken into custody.

19.11.2018
vcgarg

(Amol Rattan Singh)
Judge

Whether speaking/reasoned : Yes
Whether reportable : Yes