

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

C.R. No.7512 of 2017

Date of Decision.14.03.2018

Deepu @ Deepak Kapoor

.....Petitioner

Vs

Raghunath and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Chirag Kundu, Advocate
for the petitioner.

Mr. Dishant Tuteja, Advocate
for respondent No.1.

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AMIT RAWAL J.(ORAL)

The revision petition has been filed for setting aside the orders dated 06.01.2017 and 09.09.2017 whereby the objection of the decree holder for recalling of the order for handing over possession of the suit property has been allowed and the application moved by the petitioner-judgment debtor for recalling of the aforementioned order dated 06.01.2017 has been dismissed vide order dated 09.09.2017 as noticed above.

Mr. Kundu, learned counsel appearing on behalf of the petitioner-judgment debtor submitted that the respondent-decree holder/plaintiff instituted the suit for specific performance of agreement to sell which was decreed vide judgment and decree dated 10.04.2012. The decree holder filed application for execution of the decree and in the execution proceedings, the sale deed was executed and registered on 18.05.2016. On 14.07.2016, the trial Court ordered for issuance of warrant of possession and the same were issued on 29.09.2016. In compliance of the warrant of possession, bailiff was appointed and on 05.10.2016, he delivered possession as per the decree and satisfied the execution of the

decree and submitted report to the trial Court. The aforementioned proceedings of taking up of the possession took place in front of Munadi Kunanda, HO, PS Old Subzi Mandi, Rohtak witnessed by retired Subedar Tara Chand son of Gobind Ram resident of Mahabir Colony, Rohtak and the decree holder Raghu Nath son of Sukh Dayal resident of Rohtak.

He drew the attention of this Court to the report dated 5.10.2016 submitted by the Bailiff as extracted in the application (Annexure P-1). The same reads as under:-

“today on dated 5.10.2016 accompanied with decree holder Raghunath went to Mahabir colony near TB Hospital Rohtak for possession proceedings where Neelam wife of JD Murri Lal and her son Deepu and his another brother were present at the spot. Warrant of possession issued by court was read over to them and they were asked to give possession as per warrant of possession, sale deed and site plan and they took out articles from the room but left some articles in the room and refused to come out. After that decree holder Raghunath was asked to take out the articles but he refused to take out the articles and for taking the same on superdari. After refusal by decree holder, list of articles lying in the room was prepared and keeping the articles in the room, lock of Raghunath was got put and possession was got delivered to decree holder Raghunath as per sale deed and site plan after marking with lime stone powder and after delivery of possession fee was given to Munadi Kunada Jagat Singh and he in a loud voice informed everybody that possession of house qua which

warrant has been issued has been delivered to the decree holder Raghunath and signature of police force, decree holder and witness taken on warrant and list of articles is attached, report submitted.”

He further submitted that there was no occasion for the decree holder to move application as judgment and decree was complied with but the trial Court vide order dated 6.1.2017 erroneously ordered for returning back possession of the property taken in lieu of the order in compliance of the judgment and decree in its letter and spirit. The application moved by the judgment debtor for recalling of the aforementioned order has erroneously been dismissed vide order dated 09.09.2017. The trial Court could not have issued a fresh warrant of possession as already the decree was executed, thus, urges this Court for setting aside the order under challenge.

Per contra, Mr. Dishant Tuteja, learned counsel appearing for respondent No.1, during the course of the hearing passed on attested copy of the site plan being part and parcel of the record of the trial Court to show that the possession had been handed over in vertical shape and not horizontally. It is in that background, the application was filed and that defect has been corrected by the trial Court when the respondent-decree holder moved application. In this regard, he drew attention of the Court to the relevant portion of the order dated 6.1.2017, which reads as under:-

“....Perusal of the record of the case reveals that sale deed bearing Vasika No.2034 dated 18.05.2016 was got executed in pursuance of order dated 09.05.2016 passed by this Court. Perusal of said order reveals that dimensions of the area qua

which said sale deed was ordered to be executed were 30 feet each on eastern and western side and 15 feet each on northern and southern side. Further, total area of House No.1193/14 was 100 sq. yards. Out of which 50 sq. yds. area on the eastern side of said house was required to be delivered to the DH. Perusal of the report of the LC reveals that it has not been mentioned therein that bailiff had delivered the possession in what manner and what were dimensions of the area the possession of which was delivered to the DH. Perusal of the objections filed on behalf of DH reveals that it has been stated therein that dimension of the area of which possession has been delivered are 15 feet each on eastern and western side and 30 feet each on northern and southern side. Said area delivered to the DH by the bailiff is not in keeping with the contents of sale deed bearing vasika No.2034 dated 18.5.2016 and consequently, this court is of the considered opinion that possession of correct area has not been delivered to the DH. Consequently, this court concludes that objections filed on behalf of DH has merit. Let, fresh warrant of possession be issued against JD for 21.01.2017. It be endorsed upon the warrant of possession that possession of area measuring 50 sq. yds shall be delivered to the DH with its dimension as 30 feet each on eastern and western side and 15 feet each on northern and southern side. It be also endorsed upon said warrant of possession that possession of eastern portion of the house in question shall be delivered to the DH.

Now the case is adjourned to 21.10.2017 for awaiting report of bailiff in this regard.”

There was no occasion for the judgment debtor to move a application for recalling the aforementioned order. It was an attempt to wriggle out of the decree, thus, urges this Court for dismissal of the revision petition by upholding the orders dated 06.01.2017 and 09.09.2017.

I have heard learned counsel for the parties and appraised the paper book. Admittedly the facts qua passing of the judgment and decree, execution of the sale deed and report of the bailiff have not been controverted. The only thing is that the report of the bailiff was not in accordance with the judgment and decree of the trial court, which has been correctly noted by the Executing Court in its order dated 06.01.2017 as reproduced above.

Mr. Kundu during the course of hearing has not been able to controvert that the order under challenge has not been passed in accordance with the site plan placed on record. In fact, it was the area shown in the shadow portion towards the eastern side which was required to be given, being part and parcel of the sale deed *ibid* and not in the vertical shape. Filing of the application by the judgment debtor was nothing but an attempt to delay the warrant of possession issued in lieu of order dated 6.1.2017. There could have been scope for interference, had the trial Court deviated from the judgment and decree but it was not the case nor any document has been produced to show that the Courts below had acted in deviation of the judgment and decree to bring the case within the phrase “beyond decree”.

For the reasons aforementioned, I am of the view that the orders under challenge are perfectly legal and justified and the same cannot

be said to be passed without jurisdiction or beyond jurisdiction. No ground for interference is made out. The revision petition stands dismissed.

(AMIT RAWAL)
JUDGE

March 14, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No