[115] IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.317 of 2019 (O&M)
Date of decision: 18.01.2019

Kulwant Singh Aulakh. …. Petitioner

Versus

Bachan Singh and others. ….. Respondents

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. Jangjit Singh Dahiya, Advocate for the petitioner.

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B.S. WALIA, J.

[1] Revision petition has been filed under Article 227 of the Constitution of India read with Section 151 CPC for quashing of order Annexure P-1 dated 18.12.2018 passed by the Court of Ms. Archna Kamboj, learned Civil Judge (Sr. Div.), Gurdaspur dismissing the application filed by the petitioner under Order 21 Rule 29 CPC for staying execution proceedings during the pendency of the civil suit instituted on 29.11.2018 titled as Kulwant Singh vs Bachan Singh pending in the Court of Shri Mahesh Kumar, learned Civil Judge (Jr. Div.), Gurdaspur.

[2] Brief facts of the case leading to the filing of the present petition are that as per stand of the petitioner, respondent Nos.1 and 2 on 08.05.1997 on the basis of forged and fabricated and ante-dated agreement to sell dated 24.12.1991 filed a suit for possession as owner by way of specific performance of the agreement of sale regarding land

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measuring 26 kanals 2 marlas comprising in Rectangle No.48, Killa No.12 (7-11), 13 (7-12), 14 (8-0), 11/1/2 (1-16), 11/2 (1-10), Khewat No.324, Khatauni No.558 as entered in the Jamabandi for the year 1993-94 situated in the revenue estate of village Beri, Tehsil and District Gurdaspur, HB No.535 or in the alternative suit for recovery of Rs.60,000/- i.e. Rs.30,000/- on account of return of earnest money and Rs.30,000/- as damages. The same resulted in an ex parte judgment and decree dated 28.09.1998.

[3] Application filed by the petitioner under Order 9 Rule 13 CPC was dismissed. Civil Revision No.4947 of 2006 filed by the petitioner challenging order of dismissal of application under Order 9 Rule 13 CPC was dismissed by this Court on 04.04.2018. The same was challenged by the petitioner before Hon'ble the Supreme Court but was withdrawn with liberty to file a civil suit to challenge the ex parte judgment and decree vide order dated 23.07.2018. Pursuant thereto, petitioner challenged the ex parte judgment and decree by filing suit for declaration titled as Kulwant Singh vs Bachan Singh etc. on 29.11.2018. Thereafter, the petitioner moved an application under Order 21 Rule 29 CPC before the learned Executing Court i.e. the Court of Ms. Archna Kamboj, learned Civil Judge (Sr. Div.), Gurdaspur for staying the execution application till the decision of civil suit titled as Kulwant Singh vs Bachan Singh etc. pending in the Court of Shri Mahesh Kumar, learned Civil Judge (Jr. Div.), Gurdaspur for 06.12.2018. The application under Order 21 Rule 29 CPC was dismissed on 18.12.2018 by Ms. Archna Kamboj, the learned Civil Judge (Sr. Div.), Gurdaspur.

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[4] Learned counsel for the petitioner contended that the impugned order was legally unsustainable as the petitioner-JD had challenged the ex parte judgment and decree dated 28.09.1998 by filing a suit for declaration titled as Kulwant Singh vs Bachan Singh etc. on 29.11.2018 pursuant to liberty granted by Hon'ble the Supreme Court of India and that summons had been sent to the decree-holder in said case, that decree-holder had obtained the ex parte judgment and decree by concealing the true facts that the petitioner/JD had a prima facie case and was likely to succeed on merits and that in the circumstances, execution of the ex parte judgment and decree was liable to be stayed till the final decision of the civil suit titled as Kulwant Singh vs Bachan Singh etc. filed by the petitioner and in case the execution was not stayed, the petitioner/applicant would suffer irreparable loss and injury.

[5] I have considered the submissions of learned counsel for the petitioner. Admittedly, ex parte judgment and decree dated 28.09.1998 was passed by the then Civil Judge (Sr. Div.), Gurdaspur in Civil Suit No.307 of 1997. Application under Order 9 Rule 13 CPC was dismissed by the learned trial Court vide order dated 28.01.2003. Appeal preferred against the same by the petitioner was dismissed by the learned Additional District Judge, Gurdaspur vide order dated 09.01.2006. Civil Revision No.4947 of 2006 filed by the petitioner was dismissed by this Court on 04.04.2018. Likewise, SLP No.15684 of 2018 was dismissed as withdrawn with liberty to challenge the ex parte decree by filing a civil suit on prayer made by the petitioner.

[6] In order to invoke the provisions of Order 21 Rule 29 CPC, both the suit and the execution should be pending in the same Court –

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(**Ram Nath Shah v. Kali Prasad Singh, AIR 1999 Patna 48**) and the decree-holder and judgment debtor should also be parties to the suit. It is only in such circumstances that execution of the decree may be stayed though only in extra-ordinary circumstances – (**Smt. Sundra Bai v. Smt. Sonubai, AIR 2004 KANT. 336 and Youth Club, Bolongir v. Premlata Kumari Devi, AIR 2005 ORI 190**). Otherwise it is well-settled law that when a decree has been passed by a Court in favour of a party, he should not unless there be any extra-ordinary circumstances, deprived of enjoying the fruits of the decree except for good reasons. Thus, in other words, in the absence of extra-ordinary circumstances, the decree passed in favour of a party has to be allowed to be executed and stay is not to be granted as a matter of course. Reference is also made to the decision of Hon'ble the Supreme Court in **Shaukat Hussain @ All Akram and others v. Smt. Bhuneshwari Devi (Dead) by LRs and others, 1972 (2) SCC 731**. Relevant extract of the same is reproduced as under:-

> *"6. Order 21, CPC deals generally with the execution of decrees and orders. That order is divided into several topics, each topic containing a number of rules. The first four topics cover Rules 1 to 25 and the fifth topic, namely, stay of execution comprises 4 rules, namely, Rules 26 to 29. A perusal of these rules will show that the first three rules i.e. Rules 26 to 28 deal with the powers and duties of a court to which decree has been sent for execution. Under Rule 26, that court can stay the execution of the decree transferred to it for execution for a reasonable time to enable the judgment-debtor to apply to the court by which the decree was passed or to any court having appellate jurisdiction over the former for an order to stay execution or for any*

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other order relating to the decree or execution which might have been made by the court of first instance or the appellate court. It will be seen, therefore, that under Rule 26 the transferee court has a limited power to stay execution before it. Moreover, under sub-rule (2) if any property is seized by it in the course of execution, it may even order the restitution of the property pending the result of the application made by the judgment-debtor to the court of the first instance or to the appellate court. Rule 27 says that any such restitution made under sub-rule (2) of Rule 26 will not prevent the property of the judgment-debtor from being retaken in execution of the decree sent for execution. Rule 28 provides that any order of the court by which the decree was passed, in relation to the execution of such decree, shall be binding upon the court to which the decree was sent for execution. And then we have Rule 29 which deals with a different situation. The rule is as follows :

> *" Where a suit is pending in any court against the holder of a decree of such court, on the part of the person against whom the decree was passed, the court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided."*

It is obvious from a mere perusal of the rule that there should be simultaneously two proceedings in one court. One is the proceeding in execution at the instance of the decree-holder against the judgment-debtor and the other a suit at the, instance of the judgment-debtor against the decree-holder. That is a condition under which the court in which the suit is pending may stay the execution before it. If that was the only condition, Mr. Chagla would be right in his contention, because admittedly there was a proceeding in execution by the decree-holder against the judgment-debtor in the court of Munsif 1st Gaya and there was also a suit at

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the instance of the judgment-debtor against the decree-holder in that court. But there is a snag in that rule. It is not enough that there is a suit pending by the judgment-debtor, it is further necessary that the suit must be against the holder of a decree of such court. The words "such court" are important. "Such court" means in the context of that rule the court in which the suit is pending. In other words, the suit must be one not only pending in that court but also one against the holder of a decree of that court. That appears to be the plain meaning of the rule.

7. It is true that in appropriate cases a court may grant an injunction against a party not to prosecute a proceeding in some other court. But ordinarily courts, unless they exercise appellate or revisional jurisdiction, do not have the power to stop proceedings in other courts by an order directed to such courts. For this specific provisions of law are necessary. Rule 29 clearly shows that the power of the court to stay execution before it flows directly from the fact that the execution is at the instance of the decree- holder whose decree had been passed by that court only. If the decree in execution was not passed by it, it had no jurisdiction to stay the execution. In fact this is emphasised by Rule 26 already referred to. In the case before us the decree sought to be executed was not the decree of Munsif 1st Court Gaya but the decree of the Subordinate Judge, Gaya passed by him in exercise of his Small Cause Court jurisdiction. It is, therefore, obvious that the Order staying execution passed by the Munsif, Gaya would be incompetent and without jurisdiction."

[7] Another aspect of the matter which needs noticing is that it is not mandatory to grant stay even if the conditions under Order 21 Rule 29 CPC are fulfilled as use of the word 'may' is not to be construed as

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'shall' – (**Subhas Kumar Singh and others v. Sheo Balak Singh and others, 1975 AIR Patna 307**).

[8] In the instant case, the judgment and decree was passed by the Court of learned Civil Judge (Sr. Div.), Gurdaspur while the subsequent civil suit is in the Court of learned Civil Judge (Jr. Div.), Gurdaspur while the application under Order 21 Rule 29 CPC was filed by the petitioner before the Court of the learned Civil Judge (Sr. Div.), Gurdaspur. Apart from the fact that the provisions of Order 21 Rule 29 CPC are not attracted on account of the judgment and decree having been passed by a Court other than the Court in which the civil suit is pending, even the application under Order 21 Rule 29 CPC has not been moved in the said Court, besides, the fact remains that no good and cogent reasons have been pointed out for grant of stay. It is only in exceptional cases where the interest of justice requires that stay is to be granted, otherwise, the law is that decree-holder is not to be deprived of enjoying the fruits of the decree except for good and sufficient reasons.

[9] Accordingly, finding no merit in the revision petition, the same is dismissed in limine.

(B.S. WALIA)
JUDGE

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1. Whether speaking/reasoned : Yes/No.
2. Whether reportable : Yes/No

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