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

CR-2996-2016 (O&M)

Date of decision : 18.01.2019

Chand Ram

... Petitioner

Versus

Sube Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Harkesh Manuja, Advocate
for the petitioner.

Mr. Arun Kumar Singal, Advocate
for the respondents.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned orders, whereby the application under Order 21 Rule 32 of the Code of Civil Procedure as well as the review application has been dismissed.

Learned counsel for the petitioner submitted that vide judgment and decree dated 09.05.2011, the defendant was restrained not to interfere in the ownership and possession of the decree holder. The appeal preferred against the same was dismissed on 05.12.2012. However, according to the petitioner-plaintiff, on 18.04.2013, Judgment Debtor/defendant, came and threatened the decree holder to dispossess and attempted to raise the construction over the plot. The matter was reported to the police and therefore, the application under Order 21 Rule 32 of CPC for compliance of the judgment and decree, aforementioned, was submitted. The prayer in the

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application was to send the judgment debtor in civil prison for a period of six months for disobedience of the decree, but the trial Court after giving opportunity to the judgment debtor, framing of the issues, much less, having taken on record the evidence, dismissed the execution application by holding that the petitioner-decree holder had come to the Court for initiating contempt proceedings.

Learned counsel for the respondent submitted that the judgment and decree was against respondent No.1 only and respondent Nos.2 and 3 were not the party and therefore, had not been given any opportunity. They alleged to be accomplice of defendant No.1 and supported the impugned order as the trial Court has passed the order in tandem with the relief sought in the application.

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

The provisions of Order 21 Rule 32 of CPC envisages the following situation, for non-implementation of the judgment and decree passed, in a suit for injunction:-

"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

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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 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 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 decreeholder 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."

In such circumstances, the trial Court should not have dismissed the application in the manner and mode, as indicated above, as civil prison is also one of the ground.

Keeping in view the aforementioned facts, the impugned

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orders, under challenge are not sustainable in the eyes of law and the same are hereby set aside and the trial Court is directed to decide the application afresh in accordance with law after affording the opportunity to the parties to the *lis*, if necessary.

The parties or through their counsel are directed to appear before the Executing Court on 11.02.2019.

With the aforesaid observations, the present revision petition stands disposed of.

18.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**