

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

CR-589-2021

Date of Decision: 12.03.2021

Surjan Singh (dead) through LRs and another ...Petitioners

Versus

Swaran Lata (dead) through LRs and others ..Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Dinesh Nagar, Advocate,
For the petitioners.

(Presence marked through video conference).

ARUN MONGA, J.(ORAL)

1. Petition herein is under Article 227 of Constitution of India seeking setting aside the impugned order dated 10.02.2020 (Annexure P-6) passed by learned Civil Judge (Jr. Divn.) Dasuya vide which application filed by the petitioners/Judgment debtors seeking permission to file reply to the application of decree holder/contesting respondents for restoration of their execution petition, has been dismissed.

2. I have heard learned counsel for the petitioner and gone through the case file. I am of the view that no interference is warranted.

3. It is borne out from records that the predecessor-in-interest of the respondent/ DH filed an execution petition in the year 2014 seeking implementation of judgment and decree dated 17.11.1981. The said execution petition was dismissed for want of prosecution on 28.01.2016. An application seeking restoration thereof was filed by the DH on 18.03.2016.

Notice of the application was ordered to be issued to the JDs, who were

ultimately proceeded ex-parte vide orders dated 01.03.2017 and 23.02.2019. The execution petition was restored to its original number vide order dated 27.02.2019. Later, the JDs filed an application for setting aside the ex-parte orders dated 01.03.2017 and 23.02.2019 and vide order dated 20.09.2019, the Executing Court below set aside the same subject to payment of costs of Rs.5000/- and permitted the JDs to join the proceedings. The matter was adjourned for filing objections to the execution petition by the JDs.

4. The grievance of the petitioner/ JDs is that instead of giving an opportunity to them to file reply to the restoration application, the Executing Court below has straightway adjourned the matter for filing objections to the execution petition while it ought to have granted opportunity to the JDs to file reply to the application for restoration of the execution petition.

5. It is borne out from the records that when the ex-parte orders dated 01.03.2017 and 23.02.2019 were set aside by the Executing Court on 20.09.2019, the execution petition had already been ordered to be restored to its original number vide order dated 27.02.2019. In the backdrop of this factual aspect, the Executing Court below has rightly observed that the whole intention behind filing such an application by the JDs is only to delay the proceedings. Rule 23 of order XXI CPC shows that in this case, the JD could only file objections against the execution of the decree. It does speak of filing a separate reply to the execution application, impugned order indicates that the JDs did file objections, but the same were dismissed up to this Court. Even otherwise, no prejudice is shown to have been caused to the JDs by not allowing them to file reply to the application filed by the DH for restoration of the execution, which otherwise had already been restored by the executing Court much prior to permitting the JDs to join the proceedings.

6. There is no merit in the instant revision petition and the same is hereby dismissed.

March 12, 2021
Vandana/ Jiten

(ARUN MONGA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No