

CR-1171-2021

Date of decision: 02.07.2021

Kamla Rani

.....Petitioner

versus

Bhagwan Dass and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH**Present:** Mr. P.K.S. Phoolka, Advocate
for the petitioner.**FATEH DEEP SINGH, J. (ORAL)**

Due to outbreak of pandemic COVID-19, the instant case is being taken up for hearing through video conferencing.

Present respondents No.1, 2 and 3, namely, Bhagwan Dass, Vijay Kansal and Sandeep Goyal, respectively, claiming to be owners of property measuring 316.80 square yards and in possession of the same, filed a suit for declaration claiming to have purchased the said property through registered sale deed dated 09.04.2015 and thereby, seeking decree to the fact that the then defendant, now revisionist-Kamla Rani and others have no right and title of interest in the said property and along with it, had filed a suit for mandatory injunction seeking mesne profits as well.

Upon trial of the suit vide judgment/decreed dated 25.04.2019, the Court of the learned Civil Judge (Junior Division), Bathinda, decided and decreed the suit *ex parte* by passing following order:-

“14. Hence, in view of the above discussion, the present suit of plaintiffs is hereby decreed ex parte for declaration to the effect that the plaintiffs are owners of property in question, as detailed in head note of plaint and plaintiffs are also entitled to possession of the same and defendants are restrained from entering, interfering in any portion of suit property and from changing the nature of suit property in any manner forcibly and illegally, in any manner. Further, the plaintiffs are entitled for recovery of mesne profit of Rs.3,24,000/- from the defendants and further mesne profit @ Rs.3,000/- per month from the date of filing the suit till the date of delivery of possession for the use and occupation of the suit property in dispute.”

During the execution proceedings before the Court of the learned Civil Judge (Junior Division), Bathinda vide impugned order dated 01.03.2021, the Court had passed the following orders:-

“In the considered view of this court, the application filed by applicant/Judgment Debtor No.2 is without any merits because this court had passed the detailed order on 03.05.2020 by allowing the applicant of Judgment Debtor by staying further proceeding in the execution, till

the final disposal of application under Order 9 Rule 13 CPC filed by the Judgment Debtor, subject to furnishing security of Rs.4,62,000/- in the shape of either bank guarantee or depositing in the court or placing on record the Fixed Deposit with nationalized bank. However, the Judgment Debtor got more than one year and has not complied with the orders of the Court. Although, this court is well aware of the Covid-19 pandemic situation but since when physical working of the courts had already started and both the parties were regularly appearing in the present case, then certainly the Judgment Debtor was required under law to furnish said security as ordered by the court. The Judgment Debtor on one pretext or other is not complying with the orders of the court dated 03.02.2020 and is continuously asking for adjournments. Therefore, in the considered view of this court, further relaxation or time cannot be granted to Judgment Debtor because they have been given ample time to comply with the orders of the court dated 03.02.2020. Hence, in view of non deposit of security, the Judgment Debtors failed to perform the condition set up by this court and therefore, this execution proceedings cannot be stayed and is required to proceed further. Accordingly, application dated 23.02.2021 filed by Judgment Debtor No.2 for granting time for complying with the orders of the court dated 03.02.2020 stands dismissed and is hereby disposed of.”

From what is apparent and undisputed even in which

submissions of the counsel for the revisionist in application filed under Order 9 Rule 13 CPC by the Judgment Debtor, present petitioner seeking setting aside of the *ex parte* decree, an order was passed allowing the application for setting aside, the *ex parte* judgment/decreed subject to furnishing security of Rs.4,62,000/- in the shape of either bank guarantee or depositing it in the Court or placing on record a Fixed Deposit receipt with a Nationalized Bank. Even after passage of one year, the Judgment Debtor failed to do so and rather, what is apparent, is trying to gain unduly time to delay the due execution, the *ex parte* judgment decree. The very conduct of the petitioner is illustrative how the petitioner had been hoodwinking the Court and the process of law since the year 2018, on one pretext or the other. Firstly, upon due service and intentionally failed to appear before the Court, leading to passing of *ex parte* judgment decree and, subsequently, moving frivolous applications in between to ensure that the *ex parte* judgment decree is not implemented by any means.

Similar view has been expressed by the Court below in its observations on various occasions. Even the sympathy shown by the Court at the time of decision on the petitioners' application for setting aside *ex parte* judgment decree, the revisionist has failed to comply with the same and compliance period has lapsed is rather convincing enough to show the very *mala fide* intent, motive and purpose of the petitioner to gain time. The opposite party cannot be

denied to reap the benefits of its decree by such frivolous pleas and pretexts. There being, no merits in the instant petition, the same stands dismissed in *limine*.

02.07.2021
Neha

(FATEH DEEP SINGH)
JUDGE

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