

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

-:-

CR-919-2022 (O&M)

Date of Decision : 16.03.2022

Anil Kumar and Another

...Petitioners

versus

Sunil Soni

...Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Surinder Sharma, Advocate for the petitioners.

ALKA SARIN, J. (Oral)

Taken up in physical mode.

This is a civil revision petition under Article 227 of the Constitution of India challenging the order dated 03.03.2022 (Annexure P-5) passed by the Executing Court whereby notice has been issued to the judgment debtor for 02.05.2022.

Learned counsel for the petitioners would contend that the order of eviction was passed on 14.09.2021 and hence no notice would be required to be issued to the judgment debtor in view of the provisions of Order 21 Rule 22 CPC. In support of his argument, learned counsel for the petitioner has relied upon judgments passed by this Court in **Sh. Suresh Garodia Vs. Mr. Niyaz Ahmed Khan & Anr. [2020(3) RCR (Civil) 583]** and **Parminder Singh Sandhu Vs. Maninder Singh [CR-1604 of 2015 decided on 11.03.2015]**.

Heard.

There can be no quarrel with the law laid down in the judgments relied upon by the learned counsel for the petitioners. However, the facts of the present case also need to be seen. Notice was issued in the execution

application to the judgment debtor on 31.02.2020 in the presence of the counsel for decree-holder who at that point of time never objected to the issuance of summons to the judgment debtor in the first place. Thereafter, the decree holder failed to file the registered A.D cover as directed by the Court since the alternate address of the judgment debtor is Rajasthan and, subsequently, the counsel for the decree-holder pressed that the judgment debtor be proceeded against ex-parte. The Executing Court vide order dated 03.03.2022 declined the prayer made by the decree-holder and issued notice to the judgment debtor for 02.05.2022.

The reasoning given by the Executing Court that once notice had been issued to the judgment debtor the proceedings could not be dropped merely at the asking of the decree-holder and if the decree-holder had any objections to the issuance of the notice the same should have been taken at the first instance and not when the notice had already been issued, cannot be faulted with.

Further, Order 21 Rule 22 CPC nowhere creates a complete bar to the issuance of a notice to the judgment debtor. Order 21 Rule 22 sub rule 2 CPC reads as under :

“22. Notice to show cause against execution in certain cases :

xxxx

2) Nothing in the foregoing sub-rule shall be deemed to preclude the Court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if, for reasons to be recorded, it considers that the issue of

such notice would cause unreasonable delay or would defeat the ends of justice.

xxxx

“Failure to record such reasons shall be considered an irregularity not amounting to a defect in jurisdiction.”

In the present case the Executing Court has chosen to issue notice to the judgment debtor. Once the process has been initiated, the Executing Court was well within the law to order the continuation of the process and order the issuance of notice to be served upon the judgment debtor.

I do not find any illegality or infirmity in the order passed by the Executing Court.

The present civil revision petition is hence dismissed.

Dismissed.

March 16, 2022
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO