

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 1839 of 2020 (O&M)

Date of Decision: 16.11.2022

Nirmal Chand

... Petitioner(s)

Versus

Brahm Dass and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Parminder Singh Kanwar, Advocate
for the petitioner(s).

Anil Kshetarpal, J.

CM-15634-CII-2022

1. As prayed for, the application is allowed and the documents (Annexure P4 to P7) are taken on the record.

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2. Assailing the correctness of the order passed by the Executing Court on 10.05.2019 while dismissing the petitioner's application under order XXI Rule 32 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC"), the present revision petition has been filed.

3. The petitioner complains willful violation of a decree for grant of permanent injunction alleging that after the passing of *ex parte* judgment and decree dated 10.01.2018 granting him the relief of permanent injunction, the defendants have trespassed into his house and forcibly dispossessed him.

The respondent No.1 is petitioner's brother, whereas, the respondent No.2 is petitioner's nephew.

4. The Executing Court has found that no reliable evidence has been produced to prove that the respondents, against whom an *ex parte* decree has been passed, have willfully violated the decree. Order XXI Rule 32 CPC requires proving of two material facts. Firstly, it has to be shown that the other party has willfully disobeyed the decree, though they had the opportunity and secondly, that they have acted in its disobedience. In the proceedings under Order XXI Rule 32 CPC, not only the respondent's property can be attached, but he can also be sent to civil imprisonment. Hence, the standard of proof required for proving such allegations is stringent. It is not expected that the petitioner, after having got a judgment and decree in his favour, would meekly surrender the possession without any resistance. Thus, the conclusion drawn by the Executing Court is plausible.

5. Keeping in view the aforesaid facts, no ground is made out to interfere. Hence, the present revision petition is dismissed.

(Anil Kshetarpal)
Judge

November 16, 2022

"DK"

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No