

118 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1735-2022 (O&M)
Decided on : 06.05.2022

Aarti Warrya and another

..... Petitioner

Versus

Bibro Engineering Company and others

..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Gurcharan Dass, Advocate
for the petitioners.

Manjari Nehru Kaul, J.(Oral)

Instant revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 23.03.2021(Annexure P-1) whereby an application filed by the petitioners under Order 21 Rule 106 CPC was dismissed and thereafter the appeal filed to impugn the aforementioned order dated 23.03.2021 was also dismissed vide order dated 22.12.2021 (Annexure P-2) by the Addl. District Judge, Ludhiana.

Learned counsel for the petitioners *inter alia* contends that both the Courts below failed to appreciate that the order dated 01.11.2018 was passed behind their back and as soon as they learnt about it, an application under Order 21 Rule 106 CPC (Annexure P-9) dated 09.03.2020 was filed by them. Learned counsel submits that it is a matter of record that the petitioners are residing abroad from the last many years. He further submits that since their counsel appearing before the Court unfortunately died on 14.05.2018, they were therefore unaware about both the order dated

16.02.2015 vide which they had been asked to furnish their affidavit and the order dated 01.11.2018 vide which the sale warrants were issued. Learned counsel submits that the order dated 01.11.2018 suffers from material irregularity as the petitioners were not a party to the suit for recovery whose execution was being sought by the respondents, therefore, their properties could not have been attached. He further submits that it is the settled principle of law that a residential house can neither be attached nor sold in execution of a decree.

Heard learned counsel and perused the relevant material available on record.

Admittedly, an application under Order 21 Rule 106 CPC was moved by the petitioners after almost 1½ years from the date of the passing of the impugned order. Hence, the issue of limitation needs to be decided foremost.

It would be apposite to reproduce Order 21 Rule 106 CPC, which is reproduced as under:

“106. SETTING ASIDE ORDER PASSED EX PARTE, ETC.

(1) The applicant, against whom an order is made under sub-rule (2) rule 105 or the opposite party against whom an order is passed ex parte under sub-rule (3) of that rule or under sub-rule (1) of rule 23, may apply to the Court to set aside the order, and if he satisfies the Court that there was sufficient cause for his non- appearance when the application was called on for hearing, the Court shall set aside the order or such terms as to costs, or otherwise as it thinks fit, and shall appoint a day for the further hearing of the application.

- (2) *No order shall be made on an application under sub-rule (1) unless notice of the application has been served on the other party.*
- (3) *An application under sub-rule (1) shall be made within thirty days from the date of the order, or where, in the case of an ex parte order, the notice was not duly served, within thirty days from the date when applicant had knowledge of the order.”*

Adverting to the case in hand, an application under Order 21 Rule 106 CPC was moved on 09.03.2020 whereas the impugned order was passed on 01.11.2018. Sub rule (3) of Rule 106 CPC, which stands reproduced hereinabove clearly stipulates and prescribes a period of 30 days from the date of order or from the date of knowledge of the order, as the case may be. Though it was vehemently argued by the learned counsel that since the petitioners were residing abroad and even their counsel, who was representing them before the Court below, had died on 14.05.2018, they had no knowledge about the order dated 01.11.2018, however, this Court is unable to accept the submissions made by learned counsel for the petitioners.

It would be relevant to point out that no doubt their counsel passed away prior to the passing of the impugned order, however, the petitioners, who were residing abroad, had been pursuing the said case through their power of attorney holder one Mr. Harish Rai Dhanda, who admittedly is a practicing advocate at District Courts, Ludhiana. Thus, it is highly unbelievable that the order dated 01.11.2018 was passed behind their back and they were unaware about the same. This Court has no hesitation

in holding that since the application is hopelessly time barred, it was rightly dismissed by both the Courts below.

This Court is in the above mentioned facts and circumstances not inclined to exercise its revisional jurisdiction to set aside the impugned order. Accordingly, the present petition being devoid of any merit, stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

06.05.2022
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Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No