

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

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**CR No. 2085 of 2022 O&M)
Date of decision: 07.09.2022**

Amrik Singh

...Petitioner

Versus

M/s Krishna Real Estate Enterprises Pvt. Ltd. and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Vijay Rana, Advocate
for the petitioner.

Mr. Rishabh Gupta, Advocate
for the respondents.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for setting aside the order dated 04.03.2021 (Annexure P-12), passed by the Civil Judge (Jr. Divn.), Jalandhar, vide which the warrant of possession was issued qua the suit land, as per judgment and decree dated 18.12.2012.

Brief facts of the case are that the respondent/plaintiff filed a suit for mandatory injunction by way of delivery of possession of the land measuring 13 Marlas, as described in the plaint. The suit was contested by defendant No. 1/petitioner Amrik Singh and it was ultimately decreed on 18.12.2012. The operative part of decree reads as under:

“In this case, it is hereby ordered that suit of the plaintiff for mandatory injunction directing the defendants to deliver vacant possession of area measuring about 13

marlas as on; -East- 25 karams, West- 23 karams, South- 6 karams, North-5 karams as khata No. 448/716, khasra No. 191; (measuring 2 K-2M) situated in village Kot Kalan, Tehsil and District, Jalandhar and entered in the jamabandi for the year 1996-97 as fully shown in the plan Ex. P9 which is part of demarcation report Ex. P8 to plaintiff within a period of two months from today, is hereby decreed with costs in favour of plaintiff and against the defendants.”

Thereafter, petitioner/defendant preferred an appeal before the lower appellate Court, which was also dismissed on 24.02.2016 and thereafter, he filed a regular second appeal bearing RSA-883-2018, which was also dismissed on 21.08.2018. Thereafter, the petitioner filed SLP(C) No. 27649/2018 before Hon'ble Supreme Court, which was also dismissed on 21.01.2019.

The respondents/decreed holder, thereafter, filed an execution before the executing Court, in which the petitioner pleaded that the warrant of possession cannot be issued, however, the executing Court, vide impugned order dated 04.03.2021, dismissed the objections and directed that the warrant of possession be issued in terms of Order 21 Rule 32 (5) CPC as the decree is for mandatory injunction directing the petitioner-judgment debtor to hand over the vacant possession of the suit land.

Learned counsel for the petitioner has argued that as per Order 21 Rule 32 (5) CPC, in case of non-performance of a decree, the civil Court can either direct for the arrest of the judgment debtor and put him in civil imprisonment till the decree is satisfied or issue an order for the attachment of the property and there is no provision for issuing warrant of possession

for satisfying the decree. It is further submitted that the executing Court, while passing the impugned order, has not looked into this aspect of the case and has straightway issued the warrant of possession.

Learned counsel for the petitioner has next argued that at the first instance, the trial Court has passed an order dated 24.05.2019 that in order to execute the decree, warrant of attachment be issued and later on, the said order was again clarified on 23.09.2019 that the warrant of attachment be issued and thereafter, the warrant of attachment was duly executed. Thereafter, an application, under Order 21 Rule 32 (5) CPC, for issuance of warrant of possession was filed and vide impugned order, warrant of possession has been issued.

Learned counsel for the petitioner has relied upon a judgment of this Court rendered in ***CR No. 96 of 1998***, decided on 19.11.1998, titled as ***Narinder Singh vs. Maya Devi***, wherein this Court, while dealing with a decree of permanent injunction, has held that the warrant of possession cannot be issued and only warrant of attachment can be issued. On the face of it, the facts of this case are not applicable to the present case as in the case in hand, a decree of mandatory injunction directing the petitioner/defendant to hand over the vacant possession has been passed.

Learned counsel for the petitioner has further relied upon another judgment of this Court rendered in ***CR No. 3617 of 2004***, decided on 14.02.2006, titled as ***Ram Singh and another vs. Shiv Narain***, wherein again this Court, while dealing with a decree of permanent injunction, has observed that only the warrant of attachment can be issued.

In reply, learned counsel for the respondents has submitted that

after an opportunity was given to petitioner by way of an order of attachment to comply with the decree and having failed to do so, the respondents moved an application under Order 21 Rule 32(5) CPC with a prayer to the trial Court for issuance of warrant of possession.

Learned counsel for the respondents has relied upon **1989 PLJ 718, Ram Singh vs. Sukh Ram** as well as another judgment of this Court in **1993 (2) RRR 628, Harbans Singh vs. Daulat Ram** to submit that while dealing with a case where a decree of restoration of the possession of property is passed, the executing Court is competent to issue warrant of possession under Order 21 Rule 32 (5) CPC regarding property which was forcibly occupied by the judgment debtor.

Learned counsel for the respondents has further submitted that the it is not a case simplicitor of permanent injunction passed in favour of the decree holder, rather in the present case, a decree of mandatory injunction has been passed in favour of the respondents with a direction that the petitioner/defendant will hand over the vacant possession of the land to respondents, therefore, the provisions of Order 21 Rule 32 (5) CPC will apply and not the provisions of Order 21 Rule 32 (1) CPC.

After hearing learned counsel for the parties and going through the record, I find no merit in the present petition.

On the face of it, the trial Court at the first instance, had given an opportunity to the petitioner by way of warrant of attachment enabling him to comply with the decree, which is a decree of possession, as is reflected in the impounded decree.

It is worth noticing that the suit was instituted in the year 1999

and the decree was passed in the year 2012, which attained finality uptill Hon'ble Supreme Court when the SLP, filed by the petitioner was dismissed on 21.01.2019, however, despite the lapse of a period of more than three and a half year, the petitioner has failed to comply with the decree passed by the civil Court and has been filing applications/objections before the executing Court in order to delay the delivery of possession.

In view of the above position and also in view of the ratio of law laid down in the aforesaid judgments relied upon by learned counsel for the respondents, I find no merit in the present petition and the same is dismissed.

The executing Court is directed to decide the execution within a period of 30 days from today.

The Commissioner of Police, Jalandhar is also directed to ensure that sufficient police force is provided for the purpose of executing the decree.

07.09.2022

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No