

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-2801 of 2022 (O&M)
Date of decision: 28.10.2022

Ram Pat and others

..Petitioners

Versus

Prithvi Raj

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sumeet Jain, Advocate,
for the petitioners.

Mr. Amit Jain, Advocate,
for the respondent

ANIL KSHETARPAL, J(Oral)

C.M.No.14282-CII-2022

Allowed as prayed for.

MAIN

1. The question which arises for consideration is “Whether, while passing an order of delivery of possession in execution of an injunction decree, the Executing Court is required to record a finding that the Judgement Debtor has had an opportunity to obey the decree and he has wilfully failed to obey it?

2. Order XXI Rule 32 of the Code of Civil Procedure, 1908 is extracted as under:-

32. Decree for specific performance for restitution of conjugal rights, or for an injunction.—

(1)Where the party against whom a decree for the specific performance of a contract, or for restitution of

conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced 1[in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction] by his detention in the civil prison, or by the attachment of his property, or by both.

(2) Where the party against whom a decree for specific performance or for an injunction has been passed is a corporation, the decree may be enforced by the attachment of the property of the corporation or, with the leave of the Court, by the detention in the civil prison of the directors or other principal officers thereof, or by both attachment and detention.

(3) Where any attachment under sub-rule (1) or sub-rule (2) has remained in force for 2[six months,] if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.

(4) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of 2[six months] from the date of the attachment no application to have the property sold has been made, or if made has been refused, the attachment shall cease.

(5) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the Court, at the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree.”

3. This revision petition arises from an order passed by the Executing Court directing delivery of possession of the property to the decree holder solely on the ground that the judgment debtor has been found in possession of the said property. Admittedly, there is no judgment and

decree for delivery of possession in favour of the decree holder and against the judgment debtor. The operative part of the judgment passed by the Court on 02.11.2011 is extracted as under:-

“As a sequel to my findings on the foregoing issues, suit instituted by the plaintiff succeeds and the same is, hereby, decreed. A decree for permanent injunction restraining the defendants from interfering in the peaceful possession of the plaintiff and from taking forcible possession of the suit land is passed in favour of the plaintiff and against the defendants. Decree sheet be prepared accordingly. File be consigned to record room after due compliance.”

4. The Executing court has drawn an inference of dispossession of the decree holder after the judgment and decree was passed on 02.11.2011 solely on the basis of a report of the Local Commissioner who has reported the possession of the judgment debtor upon the said property. On a careful reading of Order XXI Rule 32 CPC, it is evident that such execution petition is maintainable only if the Court comes to a conclusion that the judgment debtor has had an opportunity of obeying the decree but has wilfully failed to obey it. Both the parts of the sentence in Order XXI Rule 32 CPC are joined by the word 'and'. Thus, both the requirements are mandatory and co-existent.

5. The learned counsel representing the respondent submits that as per Appendix “E” of the Code of Civil Procedure, 1908, the form on which the execution petition is required to be filed does not specify such pleadings. He submits that once an execution petition has been filed and the

judgment debtors have been found in possession, the Court is bound to order delivery of possession by drawing an inference that the decree holder has wrongly been dispossessed by the judgment debtor in wilful violation of the decree after it was passed.

6. This court has considered the submissions.

7. The language of Order XXI Rule 32 CPC is of utmost importance. In fact, under Order XXI Rule 32 CPC, the Court not only has the power to order delivery of possession of the property but also power to attach the property of the judgment debtor and send him to civil imprisonment. This is an extraordinary power given to the Executing court to get the decrees passed by the Courts implemented. However, such exceptional powers should be exercised with great responsibility only after ensuring that there is material on the record which proves that the decree holder has shown the co-existence of the twin conditions laid down in Order XXI Rule 32 CPC.

8. On reading of the order, it is evident that the Executing Court has not recorded any such finding. In such circumstances, this Court is left with no choice but to set aside the order passed by the Executing Court while requesting it to pass a fresh order after examining the material available on the record and after proof of the twin requirements provided under Order XXI Rule 32 CPC.

9. It has been brought to the notice of the court that in the meantime, the Executing Court, after delivery of the possession, has consigned the petition to the record. Hence, the same shall stand revived. The judgment debtors have filed an application for restitution seeking recovery of possession of the property which shall be considered by the

Executing Court in accordance with law and justice.

- 10. The revision petition is allowed.
- 11. The parties, through their counsels, are directed to appear before the Executing Court, on 24.11.2022.
- 12. All the pending miscellaneous applications, if any, are also disposed of.

October 28, 2022
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(ANIL KSHETARPAL)
JUDGE

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