

**In the High Court of Punjab and Haryana, at Chandigarh**

**Civil Revision No. 5731 of 2019**

**Date of Decision: 22.11.2022**

Ravinder and Another

... Petitioner(s)

Versus

Gyanwati and Others

... Respondent(s)

**CORAM: Hon'ble Mr. Justice Anil Kshetarpal.**

Present: Mr. Kul Bhushan Sharma, Advocate  
for the petitioner(s).

Mr. Kunal Dawar, Advocate  
for the respondent No.1.

**Anil Kshetarpal, J.**

1. In a suit filed by the respondents (plaintiffs) for grant of decree of permanent injunction restraining the petitioners herein (defendants) from interfering in their possession or from raising the construction, a judgment and decree was passed by the trial Court on 11.07.2016. The plaintiff claims that she is owner of the residential house to the extent of 8 marlas in a joint khata measuring 3 kanals and 7 marlas. In other words, the plaintiff claims that she is a co-sharer. After the decree was passed, she filed an application under Order XXI Rule 32 CPC, wherein, the Court has ordered the issuance of warrants of possession and dismissed the objections filed by the petitioners, vide various orders, the correctness whereof has been assailed in the present revision petition.

2. Order XXI Rule 32 CPC reads 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 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 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 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. It is evident that before an order is passed by the Executing Court, the party complaining willful disobedience is required to prove that the other party has had an opportunity of obeying the decree and has willfully failed to obey it. Order XXI Rule 32 CPC enables the Executing Court to not only attach the property of the judgment debtor but also order his detention in civil prison. Hence, before passing such an order, the Executing Court should strictly ensure the fulfillment of the requirements mentioned in Order XXI Rule 32 CPC.

4. The learned counsel representing the respondent, though, made sincere attempts, however, failed to convince the Court regarding the fulfillment of the aforesaid ingredients.

5. Keeping in view the aforesaid facts, the orders dated 25.07.2019, 21.08.2019 and 28.08.2019 are set aside. The present revision

petition is allowed. The Executing Court is directed to decide the application afresh after permitting the parties to lead evidence in support of their respective cases. The parties, through their learned counsel, are directed to appear before the Executing Court on 21.12.2022. The Executing Court shall make sincere endeavours for expeditious disposal of the case.

**(Anil Kshetarpal)**  
**Judge**

**November 22, 2022**  
**“DK”**

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No