

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R.No.7308 of 2019(O&M)

Date of decision: 29.08.2022

Satish Kumar

..Petitioner

Versus

Jagdish Chander

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. G.C.Shahpuri, Advocate, for the petitioner.
Mr. Amandeep Vasisht, Advocate, for the respondent.

ANIL KSHETARPAL, J(Oral)

On 22.08.2022, after hearing the learned counsel for the parties,
the following order was passed:-

“The learned counsel representing the parties have been heard at some length. Admittedly, there is a decree for mandatory injunction against the petitioner to handover the vacant possession of the one room along with one kitchen forming part and parcel of the House No. 67, Shivaji Park, Model Town, Yamuna Nagar. The petitioner claims that the possession of the aforesaid suit property was delivered to the decree holder on 12.11.2014, whereas now he is being forced to hand over the vacant possession of the first floor of the premises that although there is no decree against him. On the other hand, the learned counsel representing the respondent submits that the petitioner is guilty of abuse of process of the Court, therefore, the Executing Court should expand its jurisdiction to go beyond the decree. He prays for some time to substantiate the same.

List on 29.08.2022 for further arguments, in the urgent list.

No further request, written or oral, for grant of an adjournment, shall be entertained.”

Once again the matter has been heard.

The learned counsel representing the respondent while drawing
the attention of the Court to para 21 of the judgment in Krishnan

Namboodiri vs. Unnikrishnan Namboodiri, 2005 AIR (Kerala) 328,

contends that the Executing Court can increase the scope of execution petition even beyond the decree passed. Para 21 read as under:-

“A decree, an order or direction passed or issued by a Court is intended to be obeyed. There is no justification for raising any technical argument against the implementation of the same. If decrees and orders passed by the Courts are violated or disobeyed without impunity by the parties to the suit or proceedings, the result would be lawlessness. To protect the rule of law and to see that the decrees and orders passed by the courts are obeyed and implemented ample provisions have been made in the Civil Procedure Code. All the contingencies cannot be foreseen by the law makers. In appropriate cases, when there is nothing which prohibits a particular course of action being taken, it cannot be said that the Court lacks its inherent power to implement its own decision or to prevent disobedience of its decrees or order or to restore the parties to the original position which they occupied before the disobedience or violation of the decree or order. If the Courts do not have the said inherent power, the litigants would have no faith in Courts and they may resort to other shortcuts than approaching the civil courts. Judicial notice can be taken that the number of Writ Petitions being filed before this Court for police assistance for implementing the orders passed by the Civil Courts are on its increase. The reason may be that the machinery of the Subordinate Courts in implementing their decrees and orders is ineffective or inadequate in the point of view of the litigants. It is also to be noted that the number of writ petitions being filed before this Court complaining of police interference in civil disputes is also on the increase in recent years. One of the main reasons for such complaints is the illegal interference by the police in civil disputes. One of the parties may resort to such practices since he hopes to get a speedy, though illegal and unjust, remedy. This points out to the need for having a pragmatic approach to the question in the matter of effective implementation and execution of the decrees and orders passed by the civil courts. The Executing Courts are not expected to deny relief to the decree holders on hyper technical grounds, which would tend to help the persons who suffered the decree or order in disobeying or violating such decrees or orders.

On a careful reading of the extracted para, it is evident that it

has not been held that the Executing Court can travel beyond the scope of

decree passed in favour of the decree holder and against the judgment debtor.

The learned counsel representing the respondent submits that the court has enabling powers under Section 151 CPC to pass any order. Such powers are required to be exercised with due care and caution and it will not be appropriate for the Executing Court to travel beyond the decree while executing the judgment and decree passed. The Executing Court can only decide the questions that relate to the execution, discharge and satisfaction of the decree.

Hence, the impugned order dated 31.10.2019 is set aside. The revision petition is allowed.

All the pending miscellaneous applications, if any, are also disposed of.

August 29, 2022

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**(ANIL KSHETARPAL)
JUDGE**

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