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

CR-4507-2016

Date of Decision:- 09.08.2023

GURCHAIN RAM

....Petitioner

Vs.

PIARA LAL AND ORS

...Respondents

CORAM:-HON'BLE MS. JUSTICE AMARJOT BHATTI

Present: Mr. Abhiraj Singh Baweja and Mr. Harpal Singh, Advocate
for the petitioner.

Mr. Harnek Singh, Advocate for the respondent No.1.

AMARJOT BHATTI, J. (Oral)

1. The petitioner - Gurchain Ram has filed revision against the impugned order dated 16.05.2016 passed by Civil Judge (Senior Division), Hoshiarpur, Annexure P-5, vide which warrants of attachment has been issued in execution proceedings. It is the case of the petitioner that the application filed by respondent No.1 under Order 21 Rule 32 CPC is barred by limitation which is pertaining to a decree passed in a suit for declaration and permanent injunction by the then Sub-Judge-III Class, Hoshiarpur pertaining to the street mark as A.B.C.D shown in red colour and the house shown in green colour and the other land measuring 2 Kanals 5 marlas which was in the ownership of decree holder. The

defendant Nos.14 and 15 were directed to demolish the *varandah* as shown in the site plan and the judgment debtors/defendants were restrained not to interfere from using the street in question. In the application it was alleged that one opening has been made from the street shown in yellow colour and window has been opened by JD Balbir. The copy of application is Annexure P-1. The application was contested by filing reply which is Annexure P-2. In-fact in the earlier civil litigation, respondent No.1 himself claimed the *rasta* to be joint with the petitioner. The only grudge was that respondent No.1 had constructed a *varandah* which was demolished by the petitioner after the judgment and decree dated 09.01.1993. The petitioner had filed an appeal against this judgment which was also dismissed by the then Additional District Judge, Hoshiarpur vide judgment and decree dated 17.11.1995. Now the DH wants to restrain them from using the *rasta*. The judgment in appeal dated 17.11.1995 is Annexure P-3. It is claimed that the said street is the only source of light and passage which the respondent is trying to obstruct by misrepresenting in the judgment and decree in his favour. The respondents No.14 and 15 have no objection regarding the use of street by the petitioner. Their affidavit is Annexure P-4. The Executing Court has wrongly attached the property of the petitioner in order to restrain him from using the aforesaid property. In-fact the said application is barred by limitation. Therefore, the impugned order passed by the Executing Court dated 16.05.2016, Annexure P-5, may kindly be set aside.

3. Counsel for the respondent No.1 argued that there is no illegality or irregularity committed by the Executing Court while passing the impugned order dated 16.05.2016, Annexure P-5. It is the duty of the

Executing Court to execute the decree dated 09.01.1993 which has attained finality. In-fact it is the petitioner/judgment debtor who is disobeying the judgment and decree dated 09.01.1993. The appeal filed by him was also dismissed by learned Additional District Judge vide judgment and decree dated 17.11.1995. Therefore, the revision preferred by the petitioner is without merits and the same may kindly be dismissed.

4. I have considered the arguments and have gone through the record carefully. It is matter of record that Piara Lal filed Civil Suit No.59-1990 against Gurchain Ram and others seeking declaration and the relief of permanent injunction which was decreed vide judgment and decree dated 09.01.1993. Admittedly, the suit filed by the plaintiff was decreed by upholding that the street shown as A.B.C.D is the ownership of plaintiff and defendant Nos.14 and 15, with the direction to the defendants to demolish the varandah shown at point C.D.E.F in the site plan and further restraining the defendants not to interfere from using the street in question by the DH and raising any sort of construction in the street. Admittedly, Gurchain Ram one of the defendant/appellant filed civil appeal No.22/419 of 1993 which was ultimately dismissed vide judgment and decree dated 17.11.1995 which is Annexure P-3. Therefore, the relief granted in favour of Piara Lal had attained finality. Now Piara Lal had filed execution application No.21 dated 07.11.2011 under Order 21 Rule 32 CPC for the enforcement of aforesaid judgment and decree dated 09.01.1993.

The Order 21 Rule 32 CPC deals with the decree for specific performance for restitution of conjugal rights or for an injunction which reads as under:-

ORDER-XXI Rule 32 CPC

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 willfully 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.....”

Therefore, the Executing Court is required to give an opportunity to obey the decree failing which it can be enforced by way of attachment of the property of JD or by his detention in civil prison. Therefore, the DH is fully justified in filing the application and by following the process as provided under Order 21 Rule 32 CPC.

5. Learned counsel for the petitioner also raised the issue that the application filed by the DH under Order 21 Rule 32 CPC is barred by limitation as the judgment and decree is dated 09.01.1993 and the appeal was dismissed on 17.11.1995 whereas this application is filed on 07.11.2011.

I have considered this aspect of the present case. In this regard, Section 136 of the Limitation Act reads as under:-

Section 136.

For the execution of any decree (other than a decree granting a mandatory injunction) or order of any civil court.

Twelve years

[When] the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which execution is sought, takes place:

Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.

Therefore, regarding the execution of decree for injunction there is proviso according to which an application filed for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation. Therefore, the stand taken by the learned counsel for the petitioner does not hold any ground. The perusal of the impugned order dated 16.05.2016 clearly indicates that proper procedure is being followed to implement the decree passed by the then Sub- Judge-III Class, Hoshiarpur as provided under Order 21 Rule 32 of the Code of Civil Procedure, 1908.

With this observation, the Civil Revision preferred by the petitioner is without merits and is, accordingly, declined.

Pending applications, if any, also stand disposed of.

09.08.2023

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(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned: Yes/No.

Whether reportable: Yes/No