

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

104

CR-7084-2014

Decided on : 09.08.2023

DEV RAJ

... Petitioner

Versus

PARKASH RAM & ANR

... Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Sanjay Majithia, Senior Advocate with
Mr. Sumit Sinha, Advocate
for the petitioner.

Ms. Satpreet Grewal Kapila, Advocate
for the respondents.

SANJAY VASHISTH, J. (Oral)

1. Petitioner (decree holder)-Dev Raj has filed present revision petition, challenging order dated 23.08.2014 passed by the Executing Court in the execution petition, whereby, application filed by the petitioner/decree holder under Order 21 Rule 32 CPC was dismissed.

Brief facts of the application filed by the decree holder says as under:-

“Brief facts of the application is that the DH/ Applicant has filed Civil Suit No. 172 of 19.04.1995 against the JDS/ defendants for "Mandatory Injunction" directing the defendants to remove the illegal and unlawful construction raised in the passage bearing Khasra No. 160 Khatoni No. 127 Khewat No. 421 situated in Village Barchha, HB NO. 83, Tehsil Dasuya, District Hoshiarpur and to restore the passage in to its original position. That the above said Civil Suit was

decided by Mrs. Sukhwinder Kaur, PCS, Civil Judge (Jr. Divn.), Dasuya and the same was decreed by judgment and decree dated 27.11.1998 and the defendants were directed to remove the illegal and unlawful construction from the passage in suit within two months from the date of judgment and decree. That the defendants assailed the impugned judgment and decree in the appellate court and during the pendency of the appeal a compromise was affected between the parties on 23.02.2001 and compromise was Ex. A1. The counsel for the applicants and the respondents made statement in the Id. Appellate Court and the appeal was dismissed as withdrawn on 04.09.2003. That the execution filed by the DH in respect of the judgment and decree dated 27.11.1998 was pending in the executing court. In the execution JDS filed an application 21 Rule 2 read with Section 151 of CPC for recording the satisfaction of decree being adjusted and satisfied arguments hared on the application and the application was allowed by this court vide order dated 24.03.2008. That the JDS are head strong persons and they again on 05.11.2008 illegally and forcibly encroached upon the street by way of raising wall which was vacated as per the compromise and the fresh encroachment has been shown in the attached site plan in red color and devoted within letters ABCD to which they have no right to encroach upon the some and they are legally bound to vacate the same as a decree of mandatory injunction was passed by the court. That the JDS have subsequently raised the wall in the street and legally they have no right to encroach upon the passage in dispute by way of raising wall and in this way JDs have disobeyed the decree of mandatory injunction passed on 27.11.1998, hence, the present application.”

preliminary objections were raised that the application is barred by the principle of *res-judicata* estopped by his own acts and conduct, acquiescence and admissions. On merits, it was submitted that the first execution petition was disposed of, being fully satisfied, on the basis of the compromise dated 23.02.2001 between the decree holder and judgment debtors. This way, it was further objected that judgment and decree dated 27.11.1998 was fully disposed of after being satisfied vide order dated 04.09.2003.

3. For the reason of again raising the wall and obstructing the common path, second application i.e. the present one, was instituted by the decree holder but same has been dismissed by the Court by observing that applicant has failed in proving the violation of the decree by raising the wall again by the judgment debtors. While observing so, a report of demarcation conducted by Gursewak Chand Naib Tehsildar was considered and the same was not accepted.

4. It has also been observed that there is no document with the Naib Tehsildar, who demarcated the site, to say that the judgment debtors were served any notice before conducting the demarcation, though, the signatures were appearing on the demarcation report dated 12.12.2008, as pointed out by the counsel for the petitioner (decree holder).

5. On the other hand, counsel for the respondents (judgment debtors) submits that the present application, which is the second application, filed by the decree holder for execution of the decree is not maintainable, as per law. Even, the limitation of three years had expired by the time second application was instituted. However, after seeking required instructions from the judgment debtors, counsel submits that as on day, there is no violation of the judgment and decree dated 27.11.1998 and the position

on the spot is the same as it was at the time of the compromise between the decree holder and judgment debtors.

6. Learned Senior counsel for the petitioner cites the judgment of this Court (Punjab and Haryana High Court) i.e. **“Surinder Singh v. Balwant Singh (dead) through LRs and others 2017 (2) R.C.R. (Civil) 452”** and submits that while dealing with the similar situation, this Court has made certain observations which are applicable to the facts and circumstances of the present case/revision petition also.

7. He also points out that after taking note of the amendment in sub-Rule (v) of Rule 32 CPC, introduced with effect from 01.07.2002, Court has covered prohibitory as well as mandatory injunctions, for entertaining such applications even second time.

8. Court has even observed that decree holder cannot be compelled to file another suit for it, which would multiply the litigation discouraging the public policy.

Thus, this Court is of the view that this observation made by the Co-ordinate Bench of this Court is in consonance with the principle *“interest reipublicae ut sit finis litium”* which means that it is in the interest of the State that there should be a limit to the litigation.

9. Operative part of the para 4 to 8 of the cited judgment says as under”-

“[4]. For attracting action in execution of judgment and decree under Order 21 Rule 32 CPC, violation has to be proved by the decree-holder. Mere passing reference to say that the judgment-debtor was not bound by the decree cannot be taken to be an instance of alleged violation. It is true that, even if, there is no violation of the decree as on date in terms of specific instance, that itself will not

preclude the decree-holder from taking action in terms of Order 21 Rule 32 CPC at a subsequent stage, when such an occurrence takes place. The decree-holder cannot be compelled to file another suit so as to seek fresh restraint order against the judgment-debtor.

[5]. Explanation was added to sub-Rule (v) of Rule 32 CPC by way of amendment w.e.f. 01.07.2002. It has been declared that the expression "the act required to be done" covers prohibitory as well as mandatory instructions. The intended object was to give full effect to the decree. In Gurcharan Singh and another vs. Gurudwara Shri Singh Sabha (Regd.) Sector 19-D, Chandigarh, 2004(2) PLR 330, this Court after considering recommendations of the Law Commission on the 3 of 6 point in issue and the explanation added to Order 21 Rule 32 CPC by way of amendment observed in the following manner:-

"15. It is in view of the afore-mentioned historical perspective that the order dated 23.2.2004 passed by the Civil Judge has to be examined. The expression 'act required to be done' has, been extended to prohibitory as well as mandatory injunctions. The view taken by the Full Bench of Delhi High Court has been treated as a narrower view because that was a case, in which the decree against the licensee was to quit and vacate the premises but the High Court by taking a narrower view expressed its inability to invoke Order 21 Rule 32(5). Therefore, the question posed by the Law Commission, which led to the recommendation for adopting wider view has been accepted by inserting explanation to Sub-rule (5). The decree-holder is not required to file another suit when he has already acquired a decree in his favour by spending much time and expense. The Court, therefore, would be fully competent to direct that the act required to be done may be done so far as practicable either by the decree holder himself or by some other person appointed

by the Court at the cost of judgment-debtor. In the instant execution of the decree for mandatory injunction, where the possession is sought from a licensee. The aforesaid order is consistent with the spirit of law and the explanation added as per the recommendation made by the Law Commission. The direction to vacate the premises situated in the Gurudwara Sahib where the judgment-debtor petitioners were allowed to stay being the sewadars is another form and method to direct hand over of possession. Tweedledes is Tweedledum. It can mean 4 of 6 nothing else except the handing over of possession and, therefore, the wider view as suggested by the Law Commission has to be followed because it serves the ends of justice. The decree cannot be defeated by raising technical objections. It is well settled that technicalities of law should be construed to advance justice and not to defeat justice. With utmost defence to the Id. judges, I am of the view that the ratio of the judgment of the Full Bench of Delhi High Court in Sarup Singh's case (supra) stands considerably watered down by Explanation added to Subrule 5 of Rule 32 of Order 21. The wider view preferred by Allahabad High Court in Harihar Pandey's case (supra) has rightly held that the decree holder cannot be compelled to file another suit for it would multiply litigation which course public policy would discourage. Courts cannot be party to the illegal designs of a Judgment debtor who wishes to carry on with his illegal possession. The ground realities propagated by Realist School of Thoughts led by Jurist like Karl Llewellyn must dawn on the parties to litigation and substantial justice must be done. Therefore, I do not find any ground to interfere with the order passed by Civil Judge. The petition is liable to be dismissed. For the reasons recorded above, this petition fails and the same is dismissed."

[6]. The resultant effect would come to the effect that the decree-holder cannot be compelled to file another suit for it would multiply litigation which course public policy would discourage.

[7]. It is observed that as on date no action is warranted 5 of 6 under Order 21 Rule 32 CPC, but that does not preclude the decree-holder from initiating the proceedings, if violation of the decree takes place in future, for which decree-holder cannot be compelled to file another suit for seeking fresh restraint order against the judgment-debtor. There are many reasons for such indulgence to the decree-holder.

[8]. In view of aforesaid, I am of the view that at this juncture, no interference is called for in the impugned order. This revision petition is accordingly disposed of.”

10. After taking note of the cited judgment of **Surinder’s Singh (supra)**, this Court is in agreement with the submissions made by the petitioner (decree holder) and thus, finds that the observations made by the Court below, in regard to the non-maintainability of the second application, is incorrect.

11. Therefore, said finding is set aside. However, at this stage, learned Senior counsel upon instructions submits that though, sufficient material is there in the first demarcation report still same has been accepted by the Executing Court, yet, petitioner (decree holder) is ready to pay the required expenses, if under the direction of this Court, fresh demarcation is conducted by a competent Revenue Officer.

Said plea has not even been opposed by counsel for the respondents (judgment debtors).

12. Therefore, in these circumstances, this Court deems it

appropriate to set aside the order dated 23.08.2014 and remits the matter back to the Executing Court to take a fresh decision on the second application moved by the decree holder.

13. However, before taking any such decision, Court would appoint some competent revenue official to visit and demarcate the spot, as per law and then, to submit his/her report before the Executing Court. Court would also examine whether the situation which was there at the time of the disposal of the first execution application still exists or not. If it is found that judgment debtors have again encroached upon the common path/disputed site in violation of the compromise between the parties and satisfaction of the execution application at the first instance, considering the conduct of the judgment debtors, exemplary costs should be imposed, according to law. This Court would expect that a fresh decision would be taken by the Executing Court within four months from today after following all the due courses, prescribed by the law.

14. Charges fixed by the Executing Court would be paid/deposited by the decree holder within a week of any such order passed by the Court.

15. Disposed of.

(SANJAY VASHISTH)
JUDGE

August 09, 2023

Lavisha

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