

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

206

CR-8450-2017

Date of Decision :06.01.2023

Devender Devedi

...Petitioner

Versus

Indira Chawla

....Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Pritam Saini, Advocate for the petitioner.

None for the respondent.

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Harsimran Singh Sethi, J. (Oral)

Present petition has been filed by the petitioner/plaintiff for setting aside the order dated 09.01.2017 (Annexure P/6) passed by the Court below by which, the objections filed by the petitioner/plaintiff in respect of the execution petition filed by respondent No.3 were dismissed.

Learned counsel for the petitioner/plaintiff argues that keeping in view an exparte decree dated 11.09.2006 in favour of the respondent, an execution petition was filed and in pursuance to the proceedings of the said execution petition, the possession of the premises in question was handed over to the decree holder under the orders of the Court and the judgment debtor i.e petitioner/plaintiff was not present at the time of handing over the possession of the premises. As per the procedure, bailiff who was deputed to hand over the possession, has taken into account certain articles which were lying in the premises concerned and the same were placed before the

Court, according to which, 33 articles were recovered from the premises and the same were released on superdari to the decree holder only.

Learned counsel for the petitioner/plaintiff submits that the grievance of the petitioner was that out of the 33 recovered articles, which were handed over to him, only 17 articles belonged to him and those articles too were handed over to him in damaged conditions. Further contention of the petitioner-plaintiff is that the gold articles which were lying in the premises have not been noted in the list of articles recovered, which has caused prejudice to the petitioner-plaintiff and the petitioner-plaintiff has filed an application before the trial Court for compensating him for the supply of damaged articles, which were recovered from the premises at the time of giving possession to the decree holder and also to return him or to compensate him qua the gold articles, which were not given to him but according to him were lying in the premises concerned when the possession of the same was taken over by the decree holder.

The said application has been considered by the Court below and the prayer of the plaintiff-petitioner has been declined vide order dated 09.01.2017 (Annexure P/6) on the ground that as the possession of the articles, which were recovered from the premises in question was taken by the petitioner-plaintiff after number of years, the same will naturally result in some damage for which, decree holder cannot be made liable and further no gold articles were recovered from premises in question as per the list prepared by the bailiff, who was deputed to hand over the possession to the decree holder. The said order is under challenge in the present revision petition.

Learned counsel for the petitioner argues that though, the

possession was taken of the premises concerned in pursuance to the execution petition, but the same was taken when the petitioner was not present at the spot and the articles which were recovered from the premises concerned have not been noticed in correct manner by the bailiff and the gold articles which were lying in the premises concerned were missing for which, the petitioner/plaintiff needs to be compensated.

I have heard learned counsel for the petitioner-plaintiff and have gone through the record with his able assistance.

The arguments of the petitioner/plaintiff have been dealt with by the Court below in a manner required. Learned counsel for the petitioner/plaintiff has not been able to deny that the petitioner claimed the recovered articles after period of 05 years and only gave consent for 17 articles out of the 33 articles recovered. Once, the petitioner/plaintiff himself delayed the recovery of the articles and delayed recovery of articles by the petitioner/plaintiff from the decree holder, who had taken those articles on superdari, have resulted in damage of the said articles and for the said damage, decree holder cannot be made liable as it was the duty of the petitioner-plaintiff to get the items recovered immediately when the possession was taken by the decree holder in the year 2006.

In the present case, possession of the premises in question was taken by the decree holder in the year 2006 and the application for recovery of articles was filed by the petitioner/plaintiff in the year 2011 i.e after the delay of 05 years. This shows that in case there were articles of high value lying in the said premises, the petitioner/plaintiff would have immediately approached the Court for the recovery of the same. Argument of the learned counsel for the petitioner/plaintiff that as the revision petition was pending

before this Court due to which application was not filed for the possession of recovered articles, is not valid ground. The petitioner/plaintiff could have filed the application for the recovery of the items immediately in case any high value items were lying in the premises, which needed to be recovered by giving the description of the same. The claim raised by the petitioner/plaintiff after 05 years shows that there were no valuable articles lying in the premises concerned.

With regard to the claim of gold articles, nothing has been mentioned as to what kind of gold articles were lying, which needed to be recovered. In the absence of any such details, only bald statement of the petitioner/plaintiff cannot be accepted. Further, there was no allegation against the bailiff, who was deputed to hand over the possession of the premises concerned to the decree holder and has prepared the list of articles, which has been duly exhibited as RW3/B. Nothing has come on record that the list of recovered articles was prepared in the manner not envisaged under the law. That being so, it cannot be said that any material recovered from the premises concerned was not noted by the bailiff in the list of recovered items as Ex.RW3/B.

Keeping in view the above, no interference is called for by this Court in the order dated 09.01.2017 (Annexure P/6) passed by the Court below and the revision petition is accordingly dismissed.

January 06, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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