

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

CR 1029/2023 (O&M)

Date of decision: 23.02.2023

Anita Sharma

.....Petitioner

Vs.

Kulwinder Singh and another

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Amit Dhawan, Advocate for the petitioner.

Nidhi Gupta, J.

Challenge in this revision petition is to the order dated 10.11.2022 (Annexure P-7) passed by Civil Judge (Junior Division), Nakodar whereby the application filed by the petitioner seeking stay of execution petition filed by respondent no.1-DH, has been dismissed.

It is submitted by the Id. Counsel for the petitioner that she is owner in possession of the suit property which was sold to her by the JD/respondent no.2 herein vide agreement dated 19.10.2012. It is submitted that the suit property is alleged to have been sold to respondent no.1 herein vide subsequent agreement dated 14.1.2013. It is submitted that the petitioner is in possession of the suit property. It is further stated that the petitioner has cleared bank loans of respondent no.2 whereafter respondent no.2 executed agreement to sell dated 19.10.2012 in favour of the petitioner. However, respondent no.2 expired on 12.5.2018 and her legal heirs stepped into the shoes of respondent no.2. Since the legal heirs of respondent no.2 did not execute

sale deed in terms of the agreement to sell dated 19.10.2012, petitioner was constrained to file a civil suit for permanent injunction against the legal heirs of respondent no.2. The said suit was dismissed as withdrawn on 8.10.2018 as statement was made by legal heirs of respondent no.2 before Additional Civil Judge (Sr. Div.) Nakodar, that they are ready to execute the sale deed in favour of the petitioner. However, as the said undertaking was not fulfilled by the legal heirs of respondent No.2, petitioner was constrained to file fresh Civil Suit No.133/2020 titled as 'Anita Sharma vs Mulkh Raj Bajaj and others' (Annexure P-1), under Section 20 of the Specific Relief Act, 1963 for grant of decree for specific performance of the agreement to sell dated 19.10.2012, or in the alternative suit, for recovery of Rs.8.50 lacs. Along with the said suit (Annexure P-1) petitioner filed an application under Order 39 Rules 1 and 2 CPC which was allowed by the Id. Additional Civil Judge (Senior Division), Nakodar vide order dated 18.3.2020.

However, in the interregnum respondent no. 2 had entered into an agreement to sell dated 14.1.2013 with respondent no.1, who had also filed a civil suit dated 17.2.2016 u/s 20 of the Specific Relief Act, 1963 for possession by way of specific performance of the agreement to sell dated 14.1.2013. Said suit filed by respondent no.1 was decreed by Civil Judge (Junior Division), Nakodar vide judgment and decree dated 31.8.2017 and appeal filed by respondent no.2/JD against the said judgment and decree was dismissed vide order dated 20.8.2018. Respondent no.1 further initiated executing proceedings in respect of judgment and decree dated 31.8.2017 before the Civil Judge (Junior Division), Nakodar.

Learned counsel for the petitioner submits that it is at this stage that she discovered that respondent no.2 has sold the suit property to respondent

no.1 herein, and thereafter, she filed the present application dated 10.11.2021 (Annexure P-5) before the Executing Court praying therein that the execution proceedings be adjourned sine die till decision of Civil Suit No.133/2020 titled as 'Anita Sharma v Mulkh Raj Bajaj and others' (Annexure P-1). It is submitted that respondent no.1 contested the said application by filing reply dated 3.12.2021 (Annexure P-6), however, ld. Executing Court vide impugned order dated 10.11.2022 (Annexure P-7) dismissed the application filed by the petitioner on the ground that vide order dated 18.3.2020, ld. Civil Judge (Sr. Div.) Nakodar had restrained the defendant Mulkh Raj from alienating the suit property only till the next date of hearing i.e. 21.3.2020. Ld. Executing Court further noticed that no subsequent order after 18.3.2020 had been placed on record whereby order dated 18.3.2020 has been affirmed and as such Executing Court is bound to execute the judgment and decree.

During the course of hearing before this Court on 15.2.2023, ld. Counsel for the petitioner had sought time to place on record copy of order dated 19.1.2023 whereby ld. Additional Civil Judge (Senior Division), Nakodar confirmed the stay granted vide order dated 18.3.2020, as well as all the zimni orders in the intervening period from 18.3.2020 to 19.1.2023.

Today CM 3347-CII/2023 u/s 151 CPC moved by the petitioner seeking to place on record Annexures P-8 and P-9 has been listed along with the main revision petition. Annexure P-8 is copy of the order dated 19.1.2023 passed by Ld. Additional Civil Judge (Senior Division), Nakodar confirming the ex-parte ad interim injunction granted on 18.3.2020; while at Annexure P-9 (colly) are copies of zimni orders passed between 18.3.2020 to 19.1.2023. The application is supported by an affidavit of the petitioner.

Accordingly, application bearing CM 3347-CII/2023 is allowed and Annexures P-8 and P-9 are taken on record.

At the time of hearing today, Id. Counsel for the petitioner at the very outset submits that at time of passing of impugned order dated 10.11.2022, order dated 19.1.2023 confirming order dated 18.3.2020, was not in existence, therefore, seeks permission to withdraw the present revision petition with liberty to move a fresh application before the Executing Court seeking appropriate relief in accordance with law, if so advised.

In view of the above, present Revision Petition is dismissed as withdrawn, with liberty as prayed for.

(Nidhi Gupta)
Judge

23.02.2023
Joshi

Whether speaking/reasoned	Yes
Whether reportable	Yes/No