

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CR-2054-2022 (O&M)****Date of decision: 30.05.2023****Nisha Rani (since deceased) through LRs****...Petitioner(s)****Vs.****Rajni****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**Present:- Mr. Namit Gautam, Advocate
for the petitioner.Mr. Vaibhav Sehgal, Advocate
for the respondent.

NIDHI GUPTA, J.

Challenge in the present Revision Petition is to order dated 24.10.2019 (Annexure P7) whereby application filed by the petitioner-defendant/judgment debtor, seeking stay of proceedings in Execution Petition No.0000174-2014 (Annexure P-4) till final decision in Civil Suit No.5237 of 2018 titled as "Nisha through LRs Vs. Rajni" (Annexure P5), has been dismissed; and to order dated 15.03.2022 (Annexure P11), whereby application filed by the petitioner for review of abovesaid order dated 24.10.2019, has also been dismissed. Both impugned orders have been passed by learned Civil Judge (Junior Division), Ludhiana/Executing Court in the Execution Petition dated 13.10.2001 (Annexure P-4) filed by the respondent-plaintiff/decreed holder.

2. Brief facts of the case are that the respondent-plaintiff filed a Civil Suit No.269 of 13.09.1996 for possession by way of specific performance of agreements dated 01.07.1995 and 23.08.1995; and also for permanent injunction restraining the petitioner-defendant/Nisha Rani (Since Deceased) from alienating the property in dispute. Said Civil Suit was decreed ex-parte in favour of the respondent-plaintiff by way of judgement and decree dated 12.01.1999. Admittedly,

the application under Order 9 Rule 13 CPC filed by the petitioner for setting aside of Ex-parte decree was dismissed in default on 03.09.2002. The application for restoration of the above said application was also dismissed by way of order dated 13.08.2008. Appeal against the above said orders dated 03.09.2002 and 13.08.2008 was dismissed by the learned Appellate Court vide judgement dated 16.08.2012. The petitioners' revision petition against order dated 16.08.2012 was dismissed by this Court vide order dated 17.02.2018.

3. In the meantime, the respondent had filed Execution dated 19.04.1999 (Annexure P-2)/amended Execution Petition dated 13.10.2001 (Annexure P-4) seeking execution of the above said decree dated 12.01.1999. It is in this execution petition that the petitioner filed an application dated 15.10.2018 seeking stay of the execution proceedings. Vide the impugned order dated 24.10.2019 (Annexure P7), said application of the petitioner was dismissed. Vide the second impugned order dated 15.03.2022, the review application filed by the petitioner seeking review of the above said order dated 24.10.2019, has also been dismissed. Hence, present Revision petition.

4. It is inter alia, submitted by learned counsel for the petitioner that decree under execution dated 12.01.1999 (Annexure P1) passed in Civil Suit No.269 of 13.09.1996 is not enforceable and not binding on the rights of the petitioner as the same has been obtained by the respondent by playing fraud upon the Court. It is submitted that it is for this reason that the petitioner had filed Civil Suit No.5237 of 2018 (Annexure P5) for declaration that the judgment and decree dated 12.01.1999 is null and void. However, in the meantime the respondent had filed Execution Petition seeking execution of illegal decree dated 12.01.1999; in which the petitioner 'immediately' filed application dated 15.10.2018 (Annexure P6) seeking stay of the execution proceedings during pendency of the abovesaid Civil Suit No. 5237 of 2018. It is submitted that dismissal of the said application by the learned Executing/Civil Court vide impugned order

dated 24.10.2019 (Annexure P7) is illegal and unfair and deserves to be set aside.

5. It is further submitted that the petitioner had sought review of order dated 24.10.2019 by filing application dated 10.12.2019 (Annexure P9), however vide impugned order dated 15.03.2022, learned Court below has dismissed even the application for review filed by the petitioner.

6. It is submitted that the impugned order is unsustainable as the learned Court below has failed to appreciate the case in right perspective and has not correctly applied and interpreted legal position in this regard. Learned counsel submits that the judgment and decree under execution is ex-parte and therefore, the petitioner had not been able to bring true facts before the Court in earlier Suit filed by the respondent. It is contented that the learned Civil Judge (Junior Division) has erred in not appreciating that, accordingly, in the Suit filed by the petitioner, the petitioner had sought declaration that judgment and decree dated 12.01.1999 passed in Civil Suit No.269 of 1996 is null, void and the same is thus, liable to be set aside. It is submitted that in these circumstances, the learned Executing Court below could not have proceeded further and ought to have stayed the proceedings in execution petition.

7. It is further submitted that the learned Executing Court has not appreciated the provisions of Order 21 Rule 29 CPC which provides that if a Suit by judgment debtor is pending in a Court against the holder of a decree of that Court, the execution of the decree may be stayed until the disposal of the Suit. Learned counsel vehemently contends that in a case, such as the present one, this power ought to have been exercised by the learned Executing Court, especially as decree under execution is ex-parte. It is further submitted that if the execution is allowed, irreparable loss and injury would be caused to the petitioner. It is also submitted that intendment behind Order 21 Rule 29 CPC is the prevention of multiplicity of proceedings. It is pertinent that if it is not the money decree, then the

procedure contemplated under Order 21 Rule 29 CPC is to stay the execution till adjudication of the lis between the parties.

8. It is further submitted that learned Executing Court is not required to and is not conferred with jurisdiction to examine or consider the merits of the dispute raised in the Suit against the holder of the decree or the decree under execution. No doubt, the power to stay execution is discretionary but the said discretion is to be exercised judicially on consideration of relevant facts and circumstances, without going into the merits of the dispute between the parties.

9. In support of his contentions, Learned counsel for the petitioner relies upon judgment of Karnataka High Court in **U. Sadananda Udupa Vs. T. Kusuma Shedthi Law Finder Doc ID # 491489**; of Hon'ble Supreme Court in **Dinesh Prabhulal Barat Vs. Sai Palace Hotels Pvt. Ltd. Law Finder Doc ID # 196264**; and of Orissa High Court in **Kalpana Pattnaik Vs. Pratima Pattnaik Law Finder Doc ID # 767530**.

10. Relevant Paras 15 and 16 of **U. Sadananda Udupa (supra)** are reproduced hereinbelow:-

“15. Therefore, it needs affirmatively to be held when an application is moved under Rule 29 Order 21, C.P.C., the executing court has to examine only whether the suit pending in any other court is against the holder of such decree or of a decree which is being executed by such court on the part of the person against whom the decree was passed (applicant in Rule 291. It leaves no scope for doubt that the only consideration for invoking Rule 29 Order 21, C.P.C., is, pendency of suit in any other court against the holder of decree filed by the person against whom the decree is sought to be executed. The executing court thus has to stay its hand on such terms as to security or otherwise as it thinks fit if it is a money decree. If it is not a money decree, then the procedure

contemplated under Rule 29 Order 21, C.P.C., is to stay execution till adjudication of the lis between the parties in the suit, and no considered order relating to merit of the claim in the suit is warranted.

16. Proviso to Rule 29 envisages 'if the decree is one for payment of money, the court shall, if it grants stay without requiring security, record its reasons for so doing.' It therefore implies that the executing court before which such application is made by the judgment debtor, has to record reasons for staying the decree only if the decree is a money decree and in the opinion of the executing court, imposing the condition of furnishing security, has to be dispensed with. The first part of Rule 29 does not mandate a reasoned order to be passed to stay execution proceedings. A reasoned order has to be passed only if the decree is a money decree and the court in its opinion dispenses with furnishing of security. In other words, to apply Rule 29 Order 21, C.P.C., two circumstances should be shown to exist: when it is not a money decree, the court has to merely ascertain pendency of the suit against the holder of decree filed by the judgment debtor; there is no other option other than staying the proceedings. (ii) if it is money decree, then the executing court will stay proceedings subject to conditions like furnishing security; etc., in case otherwise pass considered order."

11. In response, it is submitted by learned counsel for the respondent-plaintiff/decreed-holder that though judgment and decree is of the year 1999, yet the petitioner by way of misuse of due process of law

has ensured that the respondent is deprived of and unable to enjoy the fruits of the decree even after 24 years.

12. Learned counsel submits that that the impugned order dated 24.10.2019 (Annexure P7), had been previously challenged by the petitioner before this Court by way of Civil Revision No.7617 of 2019 which was dismissed as withdrawn by this Court vide order dated 29.11.2019 (Annexure P8). It is submitted that therefore, challenge by the petitioner to the said order in the present revision petition is not maintainable. It is further submitted that after dismissal of his revision petition, the petitioner filed review application dated 10.12.2019 (Annexure P9), for review of order dated 24.10.2019, which too has been dismissed vide impugned order dated 15.3.2022. Learned counsel submits that the decree under execution has attained finality, and thus, there is no error in the impugned orders and the present Revision Petition deserves to be dismissed.

13. Learned counsel points out that it is relevant that in his (petitioner's) Civil Suit (Annexure P5), the petitioner had filed an independent injunction application seeking stay of the impugned order dated 24.10.2019, which was declined by learned Civil Judge on 22.04.2022.

14. In support, Learned counsel for the respondent relies upon judgments of the Hon'ble Supreme Court in **Krishna Singh Vs. Mathura Ahir** Law Finder Doc ID # 103480; in **Ratan Lal Patel Vs. Dr. Hari Singh Gour** Vishwavidyalaya Law Finder Doc ID # 1959173; and in **Asharfi Devi Vs. State of U.P.** Law Finder Doc ID # 1355527; of the Bombay High Court in **Kum. Aniket Anant Lale Vs. Shri. Prakash Balu Lale** Law Finder Doc ID # 996990; of Allahabad High Court in **Kanhaiya Lal Vs. District Judge Hardoi** Law Finder Doc ID # 1637314; in **Dudhnath Vs. Additional District Judge** Law Finder Doc ID # 715467; of Orissa High Court in **Youth Club, Bolangir Vs. Premalata Kumari Devi** Law Finder Doc ID # 137260; of this Court in **Siri Chand Vs. Jug Lal** Law Finder Doc ID #72489; in **Parmod Bhushan Paul Vs. Jasbir Singh** Law Finder Doc ID # 30763; of Kerala High

Court in **Jayalakshmi Vs. Avara Law Finder Doc ID # 63920**; and of Karnataka High Court in **Sundra Bai Vs. Sonubai Law Finder Doc ID # 73347**.

15. No other argument is raised on behalf of the parties.

16. I have heard learned counsel for the parties.

17. For the proper appreciation of the dispute at hand, enumeration of facts in chronological order is necessary, as submitted by the petitioners and admitted by the respondent:

01.07.1995 – Vide Agreement to Sell dated 01.07.1995 Petitioner/Defendant agreed to sell the house constructed on plot having an area of 100 sq. yards at Bank Colony, Haibowal Kalan, Ludhiana to the respondent/plaintiff, for an amount of Rs. 2,05,000/-.

23.08.1995 - On 23.08.1995, the defendant further executed agreement to sell on same terms and conditions as were agreed between the parties at the time of execution of agreement to sell dated 01.07.1995.

13.09.1996 - The respondent/plaintiff filed Civil Suit No. 269 for possession by way of specific performance of agreement dated 01.07.1995 and 23.08.1995; and also for permanent injunction restraining the defendant from alienating the property in dispute in any manner whatsoever in favour of anybody.

12.01.1999 - In the said suit as Petitioner Nisha Rani failed to appear, she was proceeded against ex parte; and thereafter, the suit was decreed ex parte vide judgment and decree dated 12.01.1999 (Annexure P-1).

19.04.1999 - The respondent/decreed holder filed execution petition (Annexure P-2) for executing the judgment and decree dated 12.01.1999 with the prayer to execute and get the sale deed of the suit property registered in the favour of decreed holder/respondent by appointing a Local Commissioner, and also prayed for the issuance of warrants of possession of the suit property.

20.05.2000 – The defendant/judgment debtor filed an application under Order 9 Rule 13 CPC for setting aside the ex parte judgment and decree dated 12.1.1999.

20.12.2000 - Nisha Rani expired.

19.07.2001 - The application (Annexure P-3) for impleading the LR of Nisha Rani was filed on 19.07.2001 by the present petitioners/LRs of original defendant Nisha Rani.

27.08.2001 - The reply to the application was not filed but the respondent is stated to have made a statement to the effect that she has no objection if the LR is impleaded and therefore, on 27.08.2001, the Petitioners No. (i) to (iii) were impleaded as LR of Nisha Rani.

13.10.2001 - Thereafter, the respondent filed the amended execution petition (Annexure P-4).

03.09.2002 - As the petitioners failed to appear, the petitioners' application under Order 9 Rule 13 CPC for setting aside Ex-parte judgment and decree dated 12.01.1999, was dismissed in default.

29.11.2002 - The application for restoration was filed by the petitioners only on 29.11.2002 for setting aside the order dated 03.09.2002.

27.01.2004 - Learned trial Court framed issues on 27.01.2004.

13.08.2008 - Learned trial Court vide its order dated 13.08.2008 dismissed the above said application for restoration filed by the petitioners.

16.08.2012 - Appeal against the said order dated 13.8.2008 was dismissed on 16.08.2012.

17.02.2018 - Petitioners then filed Civil Revision Petition No.6839 of 2012 against above said order dated 16.08.2012, which was dismissed by this Court on 17.02.2018.

18. It is relevant that while dismissing the petitioners' revision petition, this Court observed as follows:

"The Court below has well considered the evidence and has come to a justifiable conclusion that the applicant had been unable to justify the absence from proceedings nor could bring on record substantial documentary evidence to prove the reasons of being absent. It is well settled law that a party who seeks setting aside of such an order is supposed to show

sufficient/adequate reasons to brush aside any such misgiving and put forth their cause that they are not acting in a negligent manner, or there was want of bona fide on their part. From the conduct of the petitioner, it appears that they were not diligent enough to pursue the matter rather have been dillydallying the same for a motivated cause.”

10.10.2018 – It is at this stage, after traversing the entire legal path, after the decree had long obtained finality, and to further delay the execution, the judgment-debtor Nisha, represented by her legal representatives/the present petitioners, filed Civil Suit No. 5237 of 2018 dated 10.10.2018 whereby they laid challenge to the judgment and decree dated 12.01.1999 (Annexure P-1) passed in CS no 269 of 13.09.1996.

15.10.2018 - On the ground of filing of this suit, application was filed by the petitioners before the learned Executing Court for staying execution proceedings in EXE-0000174-2014 (Annexure P-4) till final decision of the Civil Suit i.e. CS-5237-2018.

24.10.2019 - That the learned Civil Judge, (Jr. Division) Ludhiana/Executing Court vide its Impugned order dated 24.10.2019 dismissed the application filed by the petitioner for stay of execution proceedings.

29.11.2019 - The petitioner challenged the above said order dated 24.10.2019 before this Court by way of Civil Revision Petition No.7617 of 2019, which was dismissed as withdrawn with the liberty to raise all the pleas before the learned trial Court and to avail of any other remedy available to petitioner as per law (Annexure P-8).

10.12.2019 – By way of ‘other remedy’ the petitioner filed the present application seeking review of the order dated 24.10.2019 (Annexure P-7).

NIL - The respondent filed the reply to the application.

15.03.2022 - The learned Civil Judge, (Jr. Division) Ludhiana vide its Impugned order dated 15.03.2022 (Annexure P11), dismissed the review application filed by the petitioner.

22.04.2022 - Along with the Civil Suit 5237 of 2018, petitioners had filed an injunction application which was dismissed by the learned trial Court on 22.04.2022.

19. In my view, from a mere enumeration of the above said facts, it leaves no manner of doubt and makes it crystal clear that the petitioners are misusing the provisions of law, in particular Order 21 Rule 29 CPC, to frustrate the execution of the decree.

20. Order 21 Rule 29 CPC is reproduced hereinbelow:-

“Stay of execution pending suit between decree-holder and judgment-debtor – Where a suit is pending in any Court against the holder of a decree of such Court [or of a decree which is being executed by such Court], on the part of the person against whom the decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided:

[Provided that if the decree is one for payment of money, the Court shall, if it grants stay without requiring security, record its reasons for so doing.]”

21. A bare reading of the above provision reveals that the same is a discretionary power granted to the Court. In the present case, the decree dated 12.01.1999 has attained finality. Admittedly, the application filed by the petitioner under Order 9 Rule 13 CPC stands dismissed, upheld by this Court on 17.02.2018. Thus, the only ground on which an application under Order 21 Rule 29 CPC can be entertained is, in case something is missed in the judgment and decree under execution, or something new happens subsequent to the judgment and decree under execution. Admittedly, that is not so in the present case. Even nothing to this effect has been pointed out by or on behalf of the petitioners. Thus, the provisions of Order 21 Rule 29 CPC cannot be misused so as to nullify the execution of the judgment and decree. In my view, therefore, the proceedings of the

present execution cannot be stayed merely on the asking of judgment debtor unless he shows some cogent reason behind it. It is worthwhile to mention that the stay application filed by the petitioners in the execution proceedings did not mention the provision under which it was filed, however, during adjudication, the learned Executing Court in review has dealt with it properly, following the relevant provisions of the Code.

22. In this regard, reference to judgment of the Bombay High Court in **Kum. Aniket Anant Lale (supra)**. Relevant Paras 23, 24 and 30 thereof are reproduced hereinbelow:-

“23. The principle in Shaukat Hussain (supra) was reiterated in **Krishna Singh v. Mathura Ahir & Ors. AIR 1982 Supreme Court 686**. In the said case, a suit for recovery of possession of property belonging to a Math was decreed by Munsif and said decree was finally affirmed by the Supreme Court holding that the plaintiff was in de facto management of the property though his title as Mahant was left open. The decree also held that the defendant in the suit was a trespasser. The defendant not satisfied with the decree which attained finality up-to the level of the Supreme Court and in order to nullify the decree which had already attained finality filed a civil suit in which he raised almost the same pleas which he had taken in defence of the previous suit. This suit was encouraged by the observation made by the Hon'ble Supreme Court itself that the title of the plaintiff as Mahant was left open. Such suit was filed before the Civil Judge at Varanasi. Thereafter, the defendant, filed application under Order 21 Rule 29 of the CPC seeking for a stay to the execution of the decree which had already attained finality up-to the level of the Supreme

Court. The stay as sought for was granted in purported exercise of power under Order 21 Rule 29 of the CPC.

24. The Hon'ble Supreme Court, in the aforesaid facts and circumstances, not only set aside the stay order but also directed the judicial officer to explain as to why, despite clear orders, of the Hon'ble Supreme Court, the execution was halted by an extra ordinary and palpably wrong order under Order 21 Rule 29 of CPC.The Court observed that the defendant seems to have adopted a subterfuge in order to nullify the execution of the decree. The Court held that there was very formidable defect in the order passed under Order 21 Rule 29 of the CPC because jurisdiction is vested only in the court which had passed the decree to stay its execution. The Court relied upon its earlier ruling in *Shaukat Hussain (supra)* and explained that the additional words 'or of a decree which is being executed by such Court' introduced by section 72 of the Amendment Act 104 of 1976 in Order 21 Rule 29 of the CPC, did not make any difference to the legal position explained in *Shaukat Hussain (supra)*.

30. In ***Shreenath & Anr. v. Rajesh & Ors.(1998) 4 SCC 543***, the Hon'ble Supreme Court was constrained to observe that the seeker of justice, many a times, has to take long circuitous routes, both on account of hierarchy of Courts and the procedural law. Such persons are and can be dragged till the last ladder of the said hierarchy for receiving justice but even here he only breaths fear of receiving the fruits of that justice for which he has been aspiring to receive. To reach this stage is in itself an achievement and satisfaction as he, by then has passed

through a long arduous journey of the procedural law with many hurdles replica of mountain terrain with ridges and furrows. When he is ready to take the bite of that fruit, he has to pass through the same terrain of the procedural law in the execution proceedings the morose is writ large on his face. What looked inevitable to him to receive it at his hands distance is deluded back into the horizon. The creation of the hierarchy of Courts was for a reasonable objective for conferring greater satisfaction to the parties that errors, if any, by any of the lower Courts under the scrutiny of a higher Court be rectified and long procedural laws also with good intention to exclude and filter out all unwanted who may be the cause of obstruction to such seekers in his journey to justice. But this obviously is one of the causes of delay in justice. Of course, under this pattern the party wrongfully gaining within permissible limits also stretches the litigation as much as possible. Thus, this has been the cause of anxiety and concern of various authorities, Legislators and Courts. How to eliminate such a long consuming justice? We must confess that we have still to go long way before true satisfaction in this regard is received. Even after one reaches the stage of final decree, he has to undergo a long distance by passing through the ordained procedure in the execution proceedings before he receives the bowl of justice.”

(Emphasis added)

23. Facts of the present case are similar to those in the case of **Krishna Singh (supra)** referred to by the Bombay High Court in the above said pronouncement. In the present case also, judgement and decree has

attained finality up to this Court. In such a situation, grant of stay of execution proceedings under Order 21 Rule 29 CPC would be, in the words of the Hon'ble Supreme Court, an exercise of subterfuge on part of the defendant in order to nullify the execution of the decree.

24. Relevant Paras 15 and 16 of **Krishna Singh (supra)** are reproduced hereinbelow:-

“15. It appears that before our order dated Aug. 10, 1981 was passed, Sri Krishna Singh in the suit filed by him before the Additional Civil Judge, Varanasi filed an application under Order 21, Rule 29 praying that, as the title of Harshankaranand was in dispute, the execution of the decree may be stayed. We regret to mention that this fact was concealed from us when we discharged the notice for contempt, although this application was decided by the Civil Judge as far back as 31-1-1980 and was fully known to Sri Krishna Singh. Perhaps, if our attention had been drawn to this fact, we may not have discharged the notice for contempt and would have seen to it that our orders were complied with. Unfortunately, however, it now transpires that Sri Krishna Singh seems to have adopted a subterfuge in order to nullify the execution of the decree.

16. We are rather amazed to find that the totally unwarranted plea taken by Sri Krishna Singh seems to have found favour with the Civil Judge who readily accepted the prayer of Sri Krishna Singh of staying the execution of the decree without realising the scope and ambit of Order 21, Rule 29. Under this provision, jurisdiction has to be exercised with very great care and only under special cases. The Civil Judge also *prima facie* held that Harshankaranand was not a legal

representative of late Mahant when this question was only left open and had to be decided by the Civil Judge. This shows the casual and perfunctory approach which was made by the Civil Judge. It is rather unfortunate that even the District Judge in revision affirmed the order of the Civil Judge.”

(Emphasis added)

25. In view of the discussion hereinabove, I find no merit in the present Revision Petition. The orders impugned herein are in accordance with law and suffer from no infirmity whatsoever. Present Revision Petition accordingly, stands **dismissed**.

26. Pending application(s) if any also stand(s) disposed of.

30.05.2023

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No