

Date of Pronouncement : April 24, 2023

Jasbir KaurPetitioner

Vs.

Harinder Singh and others ...Respondents

Ms. Rubina Joshan, the then Addl. Civil Judge (Sr. Divn.)
Rupnagar.

The petitioner alleges the violation of the order dated 26.8.2016 passed by this Court in RSA-2454-2016.

Brief facts of the case are that respondent No.1 has filed a suit for possession by way of specific performance of an agreement to sell dated 19.8.2006 regarding suit land against one Ajaib Singh, who died during the pendency of the suit and his LRs were impleaded as a party.

The petitioner/defendant No.2 has filed the written statement contesting the suit. Both the Courts below decreed the suit filed by respondent No.1 and thereafter, the petitioner filed RSA-2454-2016, in which the following order was passed on 26.8.2016:-

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"Learned counsel for the appellant submits that even if the agreement to sell in favour of respondent No.1-plaintiff by respondent No.2-defendant No.1, is found to be genuine, which the appellant is also assailing otherwise on merits, the fact remains that the appellant was a *bona fide* purchaser of the suit property located in the municipality for construction upon which she duly got a site plan sanctioned and thereafter, has also constructed upon the property.

Notice of motion, returnable on 11.1.2017.

In the meanwhile, operation of the impugned judgment shall remain stayed till the next date of hearing.

(Amol Rattan Singh)

August 26, 2016

Judge"

It is stated that the order was communicated to the trial Court as reflected in the order passed by the executing Court in the *zimni* order dated 17.10.2016, wherein the execution was filed by the plaintiff-respondent No.1. It is further stated that, thereafter, the plaintiff appeared before the RSA Bench and on 11.2.2017 and case was adjourned and interim order was directed to continue.

Counsel for the petitioner further submits that, thereafter, on 26.3.2019, the Presiding Officer of the executing Court passed the following order :-

"As per report of Ahlmad, no stay orders of any Appellate Court have been received in the present execution. Draft sale deed already

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filed, which has been duly compared by the Reader of this Court. Accordingly, Reader of this Court Shri Sukhwinder Singh is appointed as Local Commissioner to get executed the sale deed on behalf of JD on or before 18.4.2019, and his fees assessed is Rs.3,000/- which is to be paid by the DH. Report of Reader be awaited for 18.4.2019."

It is alleged that on the basis of the said order, despite the stay order the sale deed was executed by respondent No.3 in favour of respondent No.1/plaintiff and, therefore, all the respondents have committed the willful disobedience of the order.

It is worth noticing that on 27.10.2022, the comments of the Presiding Officer were called for and, thereafter, the concerned officer was also heard in person. The concerned officer has also filed her affidavit in this regard.

It is stated that the Execution No. EXE-.48-2015 was pending in the Court of her predecessor. It is further stated that the Judgment Debtor/petitioner, who has filed aforesaid the RSA No.2546 of 2016, was appearing in person in the execution and from 20.12.2016 till 15.11.2018, as many as 15 dates were given to produce the extension of the stay order passed by the RSA Bench.

It is further stated that for waiting over a period of more than two years, when no extension of stay order by this Court was filed by the Judgment Debtor in the execution petition, on 7.10.2016 one more opportunity was granted to produce the order.

However, on 19.1.2019, the petitioner/Judgment Debtor did not appear and was proceeded *ex parte* and, thereafter, the execution

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proceedings were directed to continue and in the absence of any extension of stay order beyond 11.1.2017 and the Judgment Debtor having opted to be proceeded *ex parte*, while acting with utmost caution, care and with application of the judicial mind, on 16.3.2019 the Judicial Officer passed the order directing the Court Ahlmad/Clerk to find out whether there is any stay order by the High Court regarding the stay of the execution proceedings, which is pending since 2016.

It is only, thereafter, when a report was submitted by the Ahlmad/Clerk of the Court that the petitioner/Judgment Debtor has not placed on record any extension of the stay order, the order dated 26.3.2019 was passed.

It is further stated that even on the subsequent date, i.e. 20.5.2019, no stay order was produced by the Judgment Debtor and, therefore, in view of judgment of the Hon'ble Supreme Court passed in **Asian Resurfacing of Road Agency Private Limited VS. Central Bureau of Investigation**, the Court proceeded with the execution.

It is worth noticing that vide order passed by this Court on 29.3.2023 in COCP-1663-2020, all the District and Sessions Judges in the States of Punjab, Haryana and U.T., Chandigarh are directed that with regard to interpretation of the judgment passed in **Asian Resurfacing's** case (*supra*), all the subordinate judicial officers will take written advice from their respective District and Sessions Judges, being the administrative head of the District and only, thereafter, they will proceed further in the respective proceedings pending before them.

In the instant case, though there was no specific order of vacation of the stay, however, equally there was no order regarding extension of the stay after 11.1.2017. A perusal of the *zimni* orders attached with the reply Annexures R-4 to R-19, it is apparent that the Executing Court was directing the petitioner/Judgment Debtor to

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produce to record order granting extension of stay. However, nothing is on record regarding to suggest that the petitioner has any extension of stay before this Court, thereafter 11.1.2017 was never extended.

In view of the same, this Court accept the explanation submitted by respondent No.2-Judicial Officer, Abohar that with due diligence and utmost a lapse of after more than two years of time, in view of the judgment passed in **Asian Resurfacing's** case (*supra*), she decided to proceed further.

Therefore, no willful disobedience is made out.

However, the sale made by respondent will be subject to final outcome of pending RSA.

Dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

April 24, 2023
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Whether speaking/reasoned : YES / NO
Whether reportable : YES / NO