

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

(117)

CR No.4069 of 2023  
Date of Decision:21.07.2023.

Vinod Kumar

.....Petitioner

Versus

Balwant Ram (now deceased) through his LR.s.

..... Respondents

**CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL**Present: Mr. Harshit Jain, Advocate  
for the petitioner.

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**VIKRAM AGGARWAL, J. (ORAL)**

1. The present revision petition, preferred under Article 227 of the Constitution of India seeks a direction to the Executing Court at Dhuri to decide Execution Application No.91 of 2019 titled as 'Vinod Kumar Versus Balwant Ram' in a time bound manner in view of the directions issued by the Hon'ble Apex Court in the case of **Rahul S. Shah Versus Jinendra Kumar Gandhi and others (2021) 6 SCC 418.**

2. The case of the petitioner is that the petitioner filed a rent petition seeking eviction of the respondent from a residential property situated in Ward No.5, Park Road, Dhuri, District Sangrur (fully described in the eviction petition). The same was allowed vide judgment dated 29.01.2018 (Annexure P-2). An appeal was preferred by the respondent but the same was dismissed by the Appellate Authority, Sangrur vide judgment dated 14.09.2022. During the pendency of the appeal, an application had been filed by the petitioner seeking

profits and a direction was issued to the respondent to pay the *mesne* profits along with arrears of rent within one month from the date of the order i.e. 20.04.2019. However, neither any rent nor any *mesne* profits had been paid since the year 2011. An execution petition was preferred in July 2019, but the same has not been decided as yet. The prayer in the present petition is to issue directions to the Executing Court to dispose of the execution petition expeditiously in compliance of the directions issued by the Hon'ble Apex Court in **Rahul S. Shah Versus Jinendra Kumar Gandhi and others (supra)**. Learned counsel has also referred to the interlocutory orders which are on record as Annexure P-5 to support his arguments.

3. I have considered the submissions made by learned counsel for the petitioner.

4. In the case of **Rahul S. Shah Versus Jinendra Kumar Gandhi and others (supra)**, the Hon'ble Apex Court was dealing with appeals arising out of a common judgment of the Karnataka High Court vide which several writ petitions had been dismissed. There was a chequered history wherein the procedural provisions had been constantly abused by the other side. While examining the matter, a slew of directions were issued by the Hon'ble Apex Court. The Hon'ble Apex Court expressed its dismay over the manner in which execution petitions are being dealt with by the Executing Courts. The directions which the Hon'ble Apex Court issued were as under:-

*42. All Courts dealing with suits and execution proceedings shall mandatorily follow the below-mentioned directions:*

*42.1. In suits relating to delivery of possession, the court must examine the parties to the suit under Order X in relation to third-party interest and further exercise the power under Order XI Rule 14 asking parties to disclose and*

*produce documents, upon oath, which are in possession of the parties including declaration pertaining to third party interest in such properties.*

*42.2. In appropriate cases, where the possession is not in dispute and not a question of fact for adjudication before the Court, the Court may appoint Commissioner to assess the accurate description and status of the property.*

*42.3. After examination of parties under Order X or production of documents under Order XI or receipt of commission report, the Court must add all necessary or proper parties to the suit, so as to avoid multiplicity of proceedings and also make such joinder of cause of action in the same suit.*

*42.4. Under Order XL Rule 1 of CPC, a Court Receiver can be appointed to monitor the status of the property in question as custodia legis for proper adjudication of the matter.*

*42.5. The Court must, before passing the decree, pertaining to delivery of possession of a property ensure that the decree is unambiguous so as to not only contain clear description of the property but also having regard to the status of the property.*

*42.6. In a money suit, the Court must invariably resort to Order XXI Rule 11, ensuring immediate execution of decree for payment of money on oral application.*

*42.7. In a suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The Court may further, at any stage, in appropriate cases during the pendency of suit, using powers under Section 151 CPC, demand security to ensure satisfaction of any decree.*

*42.8. The Court exercising jurisdiction under [Section 47](#) or under Order XXI of CPC, must not issue notice on an application of third-party claiming rights in a mechanical manner. Further, the Court should refrain from entertaining any such application(s) that has already been considered by the Court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.*

*42.9. The Court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.*

42.10. *The Court must in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala fide, resort to Sub-rule (2) of Rule 98 of Order XXI as well as grant compensatory costs in accordance with [Section 35A](#).*

42.11. *Under section 60 of CPC the term “...in name of the judgment- debtor or by another person in trust for him or on his behalf” should be read liberally to incorporate any other person from whom he may have the ability to derive share, profit or property.*

**42.12. *The Executing Court must dispose of the Execution Proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.***

42.13. *The Executing Court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the concerned Police Station to provide police assistance to such officials who are working towards execution of the decree. Further, in case an offence against the public servant while discharging his duties is brought to the knowledge of the Court, the same must be dealt stringently in accordance with law.*

42.14. *The Judicial Academies must prepare manuals and ensure continuous training through appropriate mediums to the Court personnel/staff executing the warrants, carrying out attachment and sale and any other official duties for executing orders issued by the Executing Courts.”*

5. The facts are not in dispute. Admittedly, the eviction petition filed by the present petitioner was allowed vide judgment dated 29.01.2018 (Annexure P-2). The appeal was dismissed by way of judgment dated 14.09.2022 (Annexure P-3). The *mesne* profits were also fixed vide order dated 20.04.2019 (Annexure P-4). An execution application was filed way back in July 2019 which is still pending. A perusal of the interlocutory orders (Annexure P-5) shows that the executing Court is not proceeding in the way it should have. It is understandable that the Courts below are heavily burdened with a number of case files. However, each Court is bound to follow the directions of the Hon’ble Apex Court in letter and spirit. The execution petition is to be decided within a period of six months as directed by the

Hon’ble Apex Court. Four years have already gone-by in the present execution petition.

In view of the above, the present revision petition is disposed of with a direction to the concerned Executing Court to comply with the directions of the Hon’ble Apex Court in the case referred to above and dispose of the execution petition accordingly while giving adequate reasons for its non-disposal in case of any further delay, as held by the Hon’ble Apex Court.

**July 21<sup>st</sup>, 2023**  
*Rekha*

**(VIKRAM AGGARWAL)**  
**JUDGE**

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