

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.118

Case No. : C. R. No. 4355 of 2023

Date of Decision : August 03, 2023

Parmanand and another Petitioners

vs.

Girdhari Lal and another Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Aayush Gupta, Advocate
for the petitioners.

* * *

GURBIR SINGH, J. :

1. The present revision petition filed under Article 227 of the Constitution of India has been moved to issue directions to the learned Executing Court to decide the pending execution bearing Exe-202 of 2022 (Annexure P-4) in a time bound manner.

2. Learned counsel for the petitioners has submitted that the petitioners filed suit for possession by way of partition by metes and bounds, with consequential relief of permanent injunction, in which preliminary decree was passed and thereafter final decree (Annexure P-3) was passed. Execution Petition was filed. Judgement debtor-respondent no.2 submitted that he had no objection if partition was done, as per the mode suggested by the Local Commissioner. Respondent no.1 could not be served in ordinary manner and ultimately, he was served by way of *munadi*. Thereafter, warrant of possession was issued. Third party objections were filed.

Warrant of possession dated 27.03.2023 could not be executed. The petitioner moved an application to decide the Execution Petition 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** reported as **(2021) 6 SCC 418**. The said application was dismissed vide order dated 06.07.2023 (Annexure P-4).

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

4. In the case of **Rahul S. Shah** (*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. It was observed that 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, are 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. A perusal of the interlocutory orders, placed on the file, shows that the learned Executing Court is not sensitive to the Execution Petition. Although the Courts below are heavily burdened, but each and every Court is bound to follow the directions issued by the Hon’ble Apex Court in letter and spirit. As directed by Hon’ble Apex Court, an Execution Petition is to be decided within a period of six months.

6. In view of the above, the present revision petition is disposed of with a direction to the learned Executing Court to comply with the directions issued by Hon’ble Apex Court in the case of **Rahul S. Shah** (*supra*) and dispose of the Execution Petition accordingly. In case of further delay, adequate reasons be given for its non-disposal.

7. However, nothing contained herein above shall be construed as an expression of opinion on the merits of the case.

8. Pending applications, if any, shall stand disposed of along with this judgment.

August 03, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.