

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

CR-4396-2023

Date of Decision: August 04, 2023

VIRO ALIAS BALBIR KAUR

..... Petitioner

Versus

UNION OF INDIA AND ANR.

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. R.S. Chauhan, Advocate for petitioner.

HARKESH MANUJA, J. (ORAL)

By way of present revision petition, challenge has been laid to an order dated 09.01.2023 passed by Executing Court-cum-Addl. District Judge, Amritsar whereby an application seeking restoration of the execution, filed at the instance of petitioner-landowner stands rejected.

2. Very briefly, an execution application filed at the instance of petitioner-landowner was ordered to be dismissed in default by the Executing Court-cum-Addl. District Judge, Amritsar on 16.12.2019. An application seeking restoration thereof was filed on 30.03.2022, the same also came to be dismissed vide order dated 09.01.2023.

3. Impugning the orders dated 16.12.2019 and 09.01.2023 passed by the Court below, learned counsel for the petitioner submits that dismissal of Execution Petition merely on account of technicalities has caused serious prejudice to the substantial rights of the petitioner-landowner.

4. Notice of motion.

5. Mr. Athar Ahmed, DAG, Punjab accepts notice on behalf of respondent No.2 where as Mr. Shobit Phutela, Advocate who is present in Court accepts notice for respondent No.1 on the asking.

6. I have heard learned counsel for the parties and gone through the paper-book.

7. A perusal of impugned order dated 16.12.2019 shows that execution application was dismissed-in-default on account of non-appearance from the side of petitioner-decreeholder whereas the prayer for its restoration was declined having been filed beyond the period of limitation of 30 days. In the present facts, the orders passed by Executing Court are unsustainable in law as Executing Court rather than dismissing the Execution Application should have proceeded further towards the satisfaction of the decree, particularly when the respondents were duly represented before it. Moreover, the dismissal of execution application on account of technical reasons was never a bar for the petitioner-landowner to file a fresh execution application unless the decree was satisfied and thus the Executing Court should have restored the same so as to avoid filing of any fresh application to undergo the same process of effecting service upon respondents again.

7. Accordingly, the present revision petition is allowed. The impugned orders dated 16.12.2019 and 09.01.2023 passed by the Executing Court are hereby set aside and the Executing Court is directed to adjudicate upon the Execution Petition within a period of six months from today.

04.08.2023
tejwinder

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>

