

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

CR-4552-2023

Date of Decision : 20.09.2023

Ram Gopal @ Gopal

..... Petitioner

Versus

Bijender Singh

..... Respondent

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present : Mr. Ashish Sanghi, Advocate
for the petitioner.

VIKRAM AGGARWAL, J (ORAL)

The present revision filed under Article 227 of the Constitution of India assails the order dated 07.07.2023, passed by the Addl. Civil Judge (Senior Division), Hodal, District Palwal (Annexure P-3), vide which the Executing Court directed the filing of draft sale deed.

A suit for possession by way of specific performance of agreement to sell dated 18.09.2013 and permanent injunction was filed by the respondent-Decree Holder against the petitioner-judgment debtor. The suit was decreed by the Court of Civil Judge (Junior Division), Hodal, District Balwal vide judgment and decree dated 12.09.2022 (Annexure P-1). An Execution Petition was filed by the respondent-Decree Holder (Annexure P-2). It appears that

initially notice was issued to the petitioner-judgment debtor. However, the judgment debtor did not appear before the Court. Thereafter, the Executing Court, after noticing the provisions of Order 21 Rule 22 (a) C.P.C. exempted the issuance of notice to the judgment debtor and adjourned the case to 11.08.2023 for filing draft sale deed. It is against this order that the petitioner-judgment debtor has filed the present revision petition.

I have heard learned counsel for the petitioner.

Learned counsel for the petitioner submits that once the Executing Court had initiated the process and had issued notice to the Judgment Debtor, it could not have thereafter initiated the proceedings as per the procedure laid down under Order 21 Rule 22 (a) CPC. It has been submitted that the judgment debtor had not been served at any point of time and, therefore, the Executing Court erred in dropping the process of serving him and thereafter initiating the proceedings as envisaged under the provisions of Order 21 Rule 22 (a) CPC. In support of his contentions, learned counsel has relied upon a judgment dated 16.03.2022, passed by a Coordinate Bench of this Court in CR-919-2022, titled as *Anil Kumar and Another versus Sunil Soni*.

I have considered the submissions made by learned counsel for the petitioner but find the same to be devoid of merit. The suit for possession was decreed by the trial Court vide judgment and decree dated 12.09.2022. No appeal was filed against the said judgment and decree which has been admitted during the course of

arguments. Execution Petition (Annexure P-2) was filed in which the Executing Court initially issued notice to the judgment debtor. On 07.07.2023, when the matter was fixed for appearance of the judgment debtor, the Executing Court noticed that the judgment debtor had not appeared and then noticed that the judgment which was being sought to be executed had been passed on 12.09.2022 and the Execution petition was filed on 03.01.2023 i.e. within two years of the pronouncement of judgment of the trial Court. It, therefore, held that in terms of the provisions of order 21 Rule 22 (a) CPC, no notice was required to be issued to the judgment debtor. Under the circumstances, the Executing Court dispensed with issuance of notice to the judgment debtor and fixed the case for filing of the draft sale deed.

In the considered opinion of this Court, the Executing Court did not commit any illegality in doing so. Merely because notice had once been ordered to be issued to the judgment debtor, the Executing Court was not bound to follow the same process. Rules of procedure are the handmaidens of justice and, therefore, technicalities should never come in the way of procedure especially in the execution proceedings where the directions of the Hon'ble Apex Court are that Execution petitions should be disposed of within a period of 06 months. In *Civil Appeal Nos.1659-1660 of 2021 arising out of Special Leave to Appeal Nos.7965-7966 of 2020 titled as Rahul S Shah Vs. Jinendra Kumar Gandhi and others decided on 22.04.2021*, the Hon'ble Apex Court held that the execution petitions are to be

decided within a period of six months and that attempts are made by judgment debtors to delay the same. The judgment relied upon by the learned counsel for the petitioner does not come to the aid of the petitioner. In that case, notice was ordered to be issued to the judgment debtors by the Executing Court. When the Judgment Debtors were not served, a prayer was made by the Decree Holder that the Judgment Debtor should be proceeded against ex parte. The Executing Court declined the prayer and issued notice. That order was challenged before this Court and the same was upheld by the Coordinate Bench. It upheld the reasoning given by the Executing Court that once notice had been issued, proceedings could not be dropped merely on the asking of the Decree Holder. This is not the case in the present case since the Executing Court *suo motu* resorted to the provisions of Order 21 Rule 22 CPC and directed the deposit of the draft sale deed. The judgment being relied upon by learned counsel for the petitioner is, therefore, of no assistance to the petitioner.

In view of the above, I do not find any merit in the present revision petition and the same is accordingly dismissed.

20.09.2023
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(VIKRAM AGGARWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No