



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-1088-2023 (O&M)

Reserved on:-08.08.2024

Pronounced on: - 14.08.2024

NISHI AND ANOTHER

. . . . PETITIONERS

Vs.

MADAN GOPAL

. . . . RESPONDENT

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present:- Mr. B.S. Bairagri, Advocate, for the petitioners.

Mr. Mandeep Nagpal, Advocate, for the respondent.

DEEPAK GUPTA, J.

Petitioners herein are the defendants/judgment-debtors in Civil Suit No.2177 of 2018 [CNR No.PBPT020019782018] titled '*Madan Gopal Vs. Som Nath Singla and another*', which was decreed *ex parte* vide order dated 08.04.2021 (*Annexure P3*) by the trial court. They are aggrieved by the order dated 20.01.2023 (*Annexure P1*), whereby an application to stay the execution proceedings, moved during an application under Order IX Rule 13 CPC, has been dismissed. Under challenge is also another order of same date i.e., 20.01.2023 (*Annexure P2*), whereby objections have been dismissed and warrant of possession has been directed to be issued.

2. The relevant facts for disposal of the present revision and the connected application CM-8956-CII-2023 are that Smt. Anu Gupta filed the Civil Suit seeking a decree for mandatory injunction to direct the defendants (*petitioners herein*) to vacate the suit property, which is a house detailed and described in head-note of the plaint. It was claimed by the plaintiff Smt. Anu Gupta that defendants were licensee in the said property and despite notice to them, they had failed to vacate the property. Defendant No.1-Som Nath Singla was proceeded *ex parte*. His wife - Defendant No.2 Smt. Nishi filed written statement claiming tenancy over the suit property.

2.1 Thus, possession of defendant over the suit property was admitted by both the parties. Plaintiff Smt. Anu Gupta claimed the possession of the defendants in the capacity of licensee; whereas defendant No.2 Smt. Nishi pleaded tenancy.

2.2 During pendency of the suit, the original plaintiff Smt. Anu Gupta sold the suit property in favour of Madan Gopal. Application under Order XXII Rule 10 CPC moved by him was allowed on 14.12.2020, substituting him as plaintiff in place of original plaintiff Smt. Anu Gupta.

2.3 Necessary issues were framed and the case was at the stage of evidence of the plaintiff, when nobody put in appearance on behalf of defendant No.2 Smt. Nishi on 05.03.2021 and so, she was proceeded against *ex parte*. Vide judgment and decree dated 08.04.2021, suit was decreed.

2.4 The decree-holder Madan Gopal filed the execution on 12.08.2021; whereas Smt. Nishi moved an application under Order IX Rule 13 CPC for setting aside the *ex parte* order dated 05.03.2021 and *ex parte* judgment & decree dated 08.04.2021. She also moved an application for staying the execution proceedings till the disposal of her application under order IX Rule 13 CPC. However, the application moved by her for staying the execution proceedings was dismissed on 20.01.2023. On the same day, vide a separate order of the even date i.e. 20.01.2023, the objections as filed by the Judgment-debtors were dismissed and warrants of possession was directed to be issued.

3. Assailing the abovesaid orders, the sole contention raised by Id. counsel for the petitioners is that without disposal of the application under Order IX Rule 13 CPC, the warrant of possession regarding the property in dispute could not have been issued and therefore, the impugned orders as passed by the Courts below are not sustainable in the eyes of law.

4. This Court vide an order dated 16.02.2023, while issuing notice of motion, directed status quo regarding possession to be maintained in the meantime.

5. Consequent thereto, the respondent of the revision i.e. decree-holder/Madan Gopal moved an application bearing CM-8956-CII-2023 under Section 151 CPC for vacating the *ex parte* stay order, as passed by this Court on 16.2.2023. submitting that said order was passed at the request of the petitioners on misrepresentation of the facts.

6. This Court has considered submissions of both the sides and has appraised the record carefully.

7. It is noticed by the Court that by way of the impugned order dated 20.01.2023 (*Annexure P1*), application for staying the proceedings in the execution has been dismissed after observing that application under Order IX Rule 13 CPC was moved by the applicant Smt. Nishi against Smt. Anu Gupta and not against Madan Gopal, who had already been substituted in place of Smt. Anu Gupta. It is with this observation only that application for staying the execution proceedings was dismissed. It is despite the fact that applicant-judgment debtor Nishi had already moved an application under Order VI Rule 17 CPC on 13.07.2022 to correct/rectify the title of the application under Order IX Rule 13 CPC to substitute Madan Gopal in place of Anu Gupta and also to add the name of Som Nath Singla i.e. defendant No.1/JD No.1.

8. It is undisputed that application under Order IX Rule 13 CPC is still pending. It is also undisputed that application under Order VI Rule 17 CPC so as to amend/ correct the title of the application under Order IX Rule 13 CPC has also not been disposed of so far.

9. In the aforesaid facts and circumstances, the order dated 20.01.2023 (*Annexure P1*) passed by the Executing Court, denying to stay the execution proceedings; and by issuing the warrant of possession by way of the separate order of even date, cannot be sustained in the eyes of law.

10. As such the revision petition as filed by the petitioners/ judgment-debtors, is hereby allowed. The Miscellaneous application as moved by the Decree-holder so as to vacate the stay as passed by this Court is hereby

dismissed.

11. The Executing Court is hereby directed to dispose of the application under Order IX Rule 13 CPC as moved by the judgment debtors as well as the application under Order VI Rule 17 CPC for amendment / correction of the title of the said application, in accordance with law and then proceed further in the execution in accordance with law. Till the disposal of aforesaid applications, the issuance of the warrant of possession of the suit property in the execution, as filed by the decree-holder, shall remain stayed.

14.08.2024

Vivek

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned?	Yes
Whether reportable?	No