



CR-4987-2024(O&M)

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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR-4987-2024(O&M)

Date of decision : 02.09.2024

Hemant Kumar

... Petitioner

Versus

Parveen Tyagi

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr. R.K.Chandana, Advocate
for the petitioner.

VIKAS BAHL, J.(ORAL)

1. This is a Civil Revision Petition filed under Article 227 of the Constitution of India praying for setting aside the impugned order dated 17.07.2024 (Annexure P-8) passed by the Civil Judge (Senior Division), Faridabad whereby the warrants of possession have been issued and the concerned SHO has been directed to provide ample police force to the bailiff for smooth execution of the warrants of possession for 03.08.2024.
2. The present case is a classic case where the petitioner has done every act to delay the execution proceedings.
3. Brief facts of the present case are that the respondent had filed a suit for possession by way of specific performance of agreement to sell dated 22.05.2018 with consequential relief of prohibitory injunction against the present petitioner on the plea that there was an agreement to sell dated

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22.05.2018 with respect to the property in question and the respondent had paid an amount of Rs.23 lacs to the petitioner as earnest money. On 30.07.2022, the said suit for specific performance was decreed and the copy of the said judgment and decree has been annexed with the present petition as Annexure P-2. In paragraph 2 of the said judgment, it was noticed by the trial Court that the present petitioner had put in appearance in the case and thereafter on four dates had continuously assured the Court that he would execute and register the sale deed in favour of the plaintiff and had further admitted the factum of payment and that thereafter on 15.12.2021, the petitioner did not turn up and thus, was proceeded against ex-parte.

Paragraph 2 of the said judgment is reproduced hereinbelow:-

“5. It is relevant to mention that in the present case, defendant put appearance on 09.08.2019. On 10.10.2019, 12.12.2019, 19.2.2021 and 19.10.2021 continuously defendant assured the Court that he would execute and register the sale deed in favour of plaintiff. He also admitted the factum of payment as alleged by plaintiff. Thereafter, on 15.12.2021 defendant did not turn up and ultimately, he was proceeded against exparte.”

4. The zimni orders of the above said dates have not been placed on record to contradict the said observations. The trial Court thereafter took into consideration the agreement to sell which was duly exhibited as Ex.P1 as well as receipts of payment as Ex.P2 to P7 and other documents as well as the oral evidence and decreed the suit of the respondent.

5. An application under Order 9 Rule 13 CPC (Annexure P-4) was filed by the petitioner on 29.05.2024 after a delay of more than 1 year and



10 months from the passing of the judgment and decree dated 30.07.2022. The said fact is apparent from the order dated 29.05.2024 (Annexure P-5). A perusal of the said application dated 29.05.2024, which has been annexed as Annexure P-4, would show that in paragraph 3, the petitioner had admitted the fact that the petitioner had received the summons of the case.

6. In the meantime, in the execution proceedings which were pending, vide order dated 05.12.2022, the petitioner was proceeded against ex-parte, which fact is apparent from the order dated 17.07.2024 (Annexure P-7), although the zimni order dated 05.12.2022 and other zimni orders have not been annexed along with the present petition. Apparently the petitioner had filed an application for setting aside the ex-parte order dated 05.12.2022 vide which the petitioner had been proceeded against ex-parte in the execution proceedings and that application was dismissed vide order dated 17.07.2024 (Annexure P-7) and the execution proceedings were ordered to continue. The said order dated 17.07.2024 (Annexure P-7) has not been challenged by the petitioner in the present case and is not stated to be under challenge in any other case as well. Since the petitioner had been proceeded against ex-parte in the execution proceedings and there was no stay granted with respect to the judgment and decree dated 30.07.2022, thus, by virtue of the impugned order, the Civil Judge (Senior Division), Faridabad had issued fresh warrants of possession with respect to the suit property and had also permitted the bailiff to break open the lock and had further directed that for giving possession, the SHO concerned was directed to provide ample police force to the bailiff for smooth execution of warrants

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of possession on 03.08.2024. It would be relevant to note that the petitioner during the pendency of the present petition had sold the property in question so as to create further hurdles in the path of the decree holder. A perusal of the order dated 17.07.2024 (Annexure P-6) would show that the objections raised by the lis pendens purchasers were also dismissed and it was observed that the sale in their favour was hit by Section 52 of the Transfer of Property Act and that there was clear violation of the stay order dated 14.08.2019 which had been duly entered in the office of the Sub Registrar, Badkhal. Thus, every effort was made by the petitioner to defeat the rights of the respondent/decreed holder.

7. Learned counsel for the petitioner has submitted that in the present case, the respondent is a practising lawyer and the agreement, which was entered into between the parties, was with respect to a loan transaction and the price mentioned in the same was far less than the actual value of the property which is the subject matter of the agreement. It is submitted that in case an opportunity is granted to the petitioner to file his written statement, then the petitioner would be able to prove that the suit for specific performance does not deserve to be decreed *moreso* with respect to the relief of execution of the sale deed. It is submitted that an application under Order 9 Rule 13 CPC of the petitioner is also pending and thus, it is prayed that the order, vide which the warrants of possession has been issued, be set aside.

8. This Court has heard the learned counsel for the petitioner and has perused the paper book.



9. It is not in dispute that the suit was filed by the respondent for possession by way of specific performance in the year 2019 and the present petitioner had appeared and had sought five adjournments and as per paragraph 2 of the judgment dated 30.07.2022 had undertaken to execute the registered sale deed and thereafter had not appeared and was proceeded against ex-parte on 15.12.2021. An application under Order 9 Rule 13 CPC was filed after a period of 1 year and 10 months from the date of the ex-parte judgment and decree dated 30.07.2022 and the said application is annexed as Annexure P4 and a perusal of the same would show that it was admitted by the petitioner that he had received summons of the case. Even in the execution proceedings, the petitioner was proceeded against ex-parte vide order dated 05.12.2022 and an application was filed for setting aside the ex-parte order dated 05.12.2022 before the executing Court which was dismissed vide order dated 17.07.2024 (Annexure P-7). Learned counsel for the petitioner has fairly submitted that the said order is not the subject matter of challenge in the present lis.

10. Thus, once the petitioner was proceeded against ex-parte in the execution proceedings and his application for setting aside the said ex-parte order had been dismissed, thus, it was necessary for the executing Court to proceed further and to execute the judgment and decree dated 30.07.2022 moreso when there was no stay order operating against the judgment and decree dated 30.07.2022. The petitioner has made every effort to delay the execution of the said judgment and decree dated 30.07.2022 which is apparent from the facts which have been stated hereinabove.



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11 Keeping in view the above said facts and circumstances, the order dated 17.07.2024 (Annexure P-8), vide which the warrants of possession have been issued and police help has also been ordered for taking possession of the suit property, is in accordance with law and deserves to be upheld. The present petition being meritless and having been filed only to delay the proceedings, deserves to be dismissed and is accordingly dismissed.

12. Pending application, if any, stands disposed of in view of the above said order.

(VIKAS BAHL)
JUDGE

September 02, 2024.
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No