

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-4488-2022 (O&M)

Date of Decision: March 04, 2024

Kamaljeet

...Petitioner

Versus

Krishan Lal

...Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Raj Kumar Bhatia, Advocate
for the petitioner.

Mr.Anuj Balian, Advocate
for the respondent.

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 04.10.2022, passed by learned Executing Court, in Execution Application No.20 of 2019, whereby, learned trial Court issued the warrant of possession and ordered SHO to provide the police protection for execution of the warrant of possession..

The material facts, as culled out from the paperbook, are as follows:-

That, initially, respondent-Krishan Lal (plaintiff) had filed a suit against petitioner-Kamaljeet (defendant) for seeking mandatory injunction, thereby, directing the defendant to handover the possession of half portion of House No.169, B-III, near Forest Colony, Main (Upper) Bazar, Pinjore and

the identification of the portion, so sought, was given in the site plan, which was annexed with the plaint. Besides the same, consequential relief of permanent injunction was sought to restrain the defendant to part with some another person, in any manner and for seeking recovery of arrears of mesne profits and further also, permanent injunction was sought to restrain the defendant from interfering in the legal, peaceful and physical possession of the plaintiff, over the remaining portion of the said house.

After the trial, the said suit was decreed vide judgment dated 10.03.2015, copy whereof is Annexure P-7, whereby, the petitioner-defendant was directed to handover the vacant possession of half portion of the house, allegedly lying in his possession, to the respondent-plaintiff, within a period of two months from the date of receiving certified copy of the order, failing which, the plaintiff will be entitled to get the said relief through the process of Court. Besides the same, relief of injunction and recovery of mesne profits was also granted.

Thereupon, execution petition was filed at the instance of the respondent-decree holder. After recording statement of the bailiff and decree holder, warrants of possession was issued with permission to break open the lock and SHO was directed to provide sufficient police help along with Lady Constable for smooth and effective satisfaction of the order of the Court.

Being aggrieved by the aforesaid order, the petitioner-Judgment Debtor filed the present revision petition.

At the very outset, it is submitted by learned counsel for the petitioner that since it was the decree for mandatory injunction passed by

learned trial Court, therefore, warrants of possession could not be issued. It is further submitted that order passed by learned Executing Court suffers from a patent illegality because under Order XXI Rule 32 CPC, no warrant of possession could be issued. In respect of his submissions, learned counsel for the petitioner has placed reliance upon Full Bench judgment of Hon'ble Delhi High Court, in the case of *Sarup Singh vs. DaryodhanSingh*, AIR 1972 Delhi 142.

On the other hand, learned counsel for the respondent-decree holder-plaintiff has assiduously submitted that where mandatory directions have been issued for vacating the premises, no other interpretation, except that possession has to be handed over, could be put on such a decree. Rather, learned counsel has made reference to the judgment under execution and pin-pointed that a specific direction has been given to the defendant, to handover the vacant possession of the half portion of the house, allegedly lying in his possession. It is submitted that revision petition has been filed solely to gain time to raise obstruction, vis-a-vis, execution of the judgment passed by the Court against the petitioner.

Admittedly, the respondent had filed a suit for mandatory injunction for seeking direction to the petitioner to vacate and handover the possession of the property, as detailed in the decree sheet, which has been placed on the Court file and also sought relief of permanent injunction and recovery of arrears of mesne profits @ Rs.1500/- per month, for the use and occupation of the premises in question from 10.09.2008, till the possession is handed over to the plaintiff. Undisputedly, the suit was decreed by the Court vide judgment dated 10.03.2015. Nothing, as such, is coming forth,

on the record about the said judgment having been challenged any further. It is pertinent to mention that as evident from the aforesaid judgment, the suit property was initially ownership of Des Raj, who had executed gift deed dated 15.04.1991, in favour of one of his son namely Kuldeep Singh, who is brother of the petitioner. The present petitioner (who was defendant before learned trial Court) being brother of Kuldeep Singh was also having possession of two rooms, one kitchen and one bathroom, towards the side of the house, where he was residing with his family and the residue portion of the house was in possession of Kuldeep Singh. Said Kuldeep Singh had executed a sale deed dated 30.04.2007, in favour of Krishan Lal. The respondent-plaintiff had made a request to the petitioner-defendant to vacate the property and handover the vacant possession of the half portion of the house, as his licence to use the said property had already been terminated with the service of notice dated 22.08.2008.

In the written statement, the gift deed dated 15.04.1991, allegedly executed by Des Raj, in favour of Kuldeep Singh and subsequent sale deed dated 30.04.2007 in favour of Krishan Lal, with regard to, whole of the house was asserted to be illegal. In the judgment under execution, on appraisal of the evidence, brought on record and also considering the fact of the gift deed having been challenged by Kamaljeet, in another suit, which had since attained finality, it was held that the gift deed was executed by Des Raj in favour of his son Kuldeep Singh and on that basis, Kuldeep had ownership right over whole of the suit property and thus, in pursuance of sale deed having executed in favour of Krishan Lal, he had stepped into the shoes of owner. The suit filed by the present petitioner against Kuldeep

Singh to challenge the legality and validity of the gift deed and the subsequent sale deed, is bearing CS No.72 of 2008, wherein, vide judgment dated 27.02.2012, the claim of the petitioner, with regard to his right claimed in the suit property was declined. The said suit was further challenged in appeal and by virtue of judgment dated 07.12.2014, the appeal was also dismissed. Considering the aforesaid facts, the suit filed by Krishan Lal-subsequent purchaser, for mandatory and permanent injunction, as such, was decreed.

In this backdrop, useful reference can be made to the decision rendered by this Court in *Gurcharan Singh and another vs. Gurdwara Shri Singh Sabha, 2004(2) RCR (Civil) 432*, wherein, a distinction was made, with regard to the observations made by the Hon'ble Delhi High Court in Sarup Singh's case (supra), which related to the suit filed by the plaintiff for mandatory injunction, directing the defendant to quit and vacate the workshop in dispute. The plaintiff was landlord of the suit property and the defendant was a licensee to run the workshop. The suit was decreed before learned trial Court. First appeal filed by the defendant was dismissed and second appeal was also dismissed by the Court. When the plaintiff filed execution petition, the Court ordered delivery and issued delivery warrants. Challenging the said order, revision petition was filed and while disposing of the revision petition, it was held that when the decree is not for delivery of possession, nor the decree holder adjudged his entitlement to receive the possession, provisions of Order XXI Rule 35 CPC are not attracted. The decree holder can only invoke Order XXI Rule 32 CPC for detaining the judgment-debtor in civil prison or attaching and selling his property or both.

It was observed that where a party is content to seek decree for injunction to vacate, rather than delivery of possession in a suit, properly framed for the purpose, he has to face its logical consequences and he can have the decree executed only in accordance with provisions of law governing execution of decree for injunction and he cannot employ the argument of frustration of his object, existing behind his suit, to obtain a relief from the Court, which was not envisaged by the suit and not granted by the Court.

True as it is, that in the aforesaid judgment, it was held that in a suit for injunction, the decree holder has to seek remedy only in terms of Order XXI Rule 32 CPC and cannot invoke the provisions under Order XXI Rule 35 CPC. However, in that case, the decree for mandatory injunction was only to quit and vacate the workshop. Seemingly, no prayer for handing over the possession was made. However, in the case in hand, the suit was filed for mandatory injunction. A prayer was specifically made for grant of mandatory injunction, directing the petitioner-defendant to vacate and handover the possession of half portion of the house. Prayer for possession was specifically raised in the plaint. That prayer was favourably considered by the Court and precisely, on this account, no sustenance can be drawn from *Sarup Singh's (case)*.

That apart, in *Gurcharan Singh's case (supra)*, the judgment of the Hon'ble Delhi High Court, delivered in *Sarup Singh's case (supra)* came to be considered. While quoting Law Commission's report and need to have wider view than a narrow view on the amendment brought under Order XXI Rule 32 Sub Rule (5) CPC, by Act 22 of 2002, with an insertion of explanation to Order XXI Rule 32 Sub Rule (5) CPC, it was observed that

the view taken in *Sarup Singh's case (supra)*, is narrow view driving the party to further litigation and it would not advance the cause of justice.

Therein, observations made by the Law Commission were taken into consideration, which are reproduced, as herein given:-

“Referring to the judgment of the Full Bench of Delhi High Court in Sarup Singh's case (supra), the Law Commission has observed as under;-

"8.1.10. In a Delhi case (Sarup Singh v. Daryodhan Singh, A.I.R. 1972 Delhi 142 (F.B.) the comparison was between Order 21, Rule 32 and Order 21 Rule 35. The injunction issued against the licensee was to vacate the premises occupied by him as licensee. It was held that steps to evict the licensee would mean, practically, dispossession of the licensee (judgment-debtor). This was not permissible under Order 21 Rule 32.

8.1.11. The Delhi case was really one in which the decree against the licensee was to quit and vacate the premises. The decree in question was sought to be enforced under Order 21 Rule 32(5). The Court held that truly Rule 32(5) cannot in the very nature of things come to the aid of a decree holder to obtain possession. But the rulings of the other High Courts (mentioned above) do reveal a conflict of decision."

After noticing the aforementioned judgments of various High Courts including the Full Bench judgment of Delhi High Court in Sarup Singh's case, the Law Commission made recommendations, which led to the insertion of explanation 5. The recommendations of the Law Commission read as under:-

8.1.12. Recommendation.- Clarification is obviously needed on the point at issue. It is suggested that as a matter of legislative amendment, it is preferable to incorporate the wider view (though the majority of the

High Courts have taken a contrary view) and to provide that the words "act required to be done" cover prohibitory (as well as mandatory) injunctions. This would also be in conformity with Section 3(2), General Clauses Act, 1897 which provides that in all Central Acts, the words "act" includes illegal omissions. Besides this, on the merits there is also justification why a decree-holder should be driven to a separate suit for getting relief in the nature of enforcement of a decree which he must have obtained after considerable expenditure of time, labour and money."

In the backdrop of recommendations of the Law Commission, it is apt to make beneficial reference to paragraph No.10 of the *Gurcharan Singh's case (supra)*, which reads as herein given:-

10. It is in view of the afore-mentioned historical perspective that the order dated 23.2.2004 passed by the Civil Judge has to be examined. The expression '**act required to be done**' has, been extended to prohibitory as well as mandatory injunctions. The view taken by the Full Bench of Delhi High Court has been treated as a narrower view because that was a case, in which the decree against the licensee was to quit and vacate the premises but the High Court by taking a narrower view expressed its inability to invoke Order 21 Rule 32(5). Therefore, the question posed by the Law Commission, which led to the recommendation for adopting wider view has been accepted by inserting explanation to Sub-rule (5). The decree-holder is not required to file another suit when he has already acquired a decree in his favour by spending much time and expense. The Court, therefore, would be fully competent to direct that the act required to be done may be done so far as practicable either by the decree-holder himself or by some other person appointed by the Court at the cost of judgment-debtor. In the instant

execution of the decree for mandatory injunction, where the possession is sought from a licensee, the aforesaid order is consistent with the spirit of law and the explanation added as per the recommendation made by the Law Commission. The direction to vacate the premises situated in the Gurudwara Sahib where the judgment-debtor petitioners were allowed to stay being the sewadars is another form and method to direct hand over of possession. Tweedledee is Tweedledum. It can mean nothing else except the handing over of possession and, therefore, the wider view as suggested by the Law Commission has to be followed because it serves the ends of justice. The decree cannot be defeated by raising technical objections. It is well settled that technicalities of law should be construed to advance justice and not to defeat justice. With utmost defence to the Id. Judges, I am of the view that the ratio of the judgment of the Full Bench of Delhi High Court in Sarup Singh's case (*supra*) stands considerably watered down by Explanation added to Sub-rule 5 of Rule 32 of Order 21. The wider view preferred by Allahabad High Court in Harihar Pandey's case (*supra*) has rightly held that the decree holder cannot be compelled to file another suit for it would multiply litigation which course public policy would discourage. Courts cannot be party to the illegal designs of a Judgment debtor who wishes to carry on with his illegal possession. The ground realities propagated by Realist School of Thoughts led by Jurist like Karl Llewellyn must dawn on the parties to litigation and substantial justice must be done. Therefore, I do not find any ground to interfere with the order passed by Civil Judge. The petition is liable to be dismissed.

For the reasons recorded above, this petition fails and the same is dismissed.”

Thus, in view of the notice having taken by the Law Commission of the view expressed in *Sarup Singh's case (supra)*, a

recommendation was made for adopting wider view, which was accepted by insertion of explanation to Sub-rule (5). In the given circumstances, the Court is fully competent to direct the act required to be done, may be done, so far as practicable, either by the decree holder himself or some other person appointed by the Court, at the cost of judgment debtor. In the instant case, the execution of decree for mandatory injunction, where possession is sought from a licensee, who was not inclined to part with the possession of his own, the aforementioned order is consistent with the spirit of law and explanation added, as per the recommendation made by the Law Commission.

Furthermore, be it noted that learned counsel for the petitioner submits that suit for partition between the parties is pending adjudication, but however, as already observed aforesaid, the gift deed executed by his father, in favour of his brother Kuldeep Singh, has since been upheld by the Court and the said judgment has since attained finality and on the basis thereof, the sale deed in favour of Krishan Lal, at the behest of Kuldeep Singh, has also been upheld by the Court. In the light of the same, the question of pendency of the suit for partition (if any) will not raise obstruction in the execution of the judgment in question.

Hence, the impugned order warrants no interference by this Court, in exercise of revisional jurisdiction. Resultantly, the present revision petition sans merit and the same is dismissed.

March 04, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No