

CM-21013-CII-2024 in/and  
RA-CR-144-2024 in  
CR-17-2022

[11]

2024:PHHC:167700



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

CM-21013-CII-2024 in/and  
RA-CR-144-2024 in  
CR-17-2022  
Date of decision: 16.12.2024

Mehinga Singh

...Applicant/Petitioner

Versus

Hazara Singh and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE VIKAS BAHL**

Present: Mr. Umesh Kumar Kanwar, Advocate and  
Ms. Nisha Rana, Advocate for the applicant/petitioner.

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**VIKAS BAHL, J. (ORAL)**

**CM-21013-CII-2024**

1. This is an application filed under Section 5 of the Limitation Act for condonation of delay of 74 days in filing the present review application.
2. For the reasons stated in the application and in view of order dated 17.09.2024 passed by the Hon'ble Supreme Court in Special Leave to Appeal (C) No.21189 of 2024, the present application is allowed and the delay of 74 days in filing the present review application is condoned.

**RA-CR-144-2024 in CR-17-2022**

1. This is an application filed under Order 47, Rule 1 read with Section 114 of CPC for reviewing/recalling/modifying the order dated



06.08.2024 passed by this Court in CR-17-2022 and to rehear the abovesaid revision petition.

2. This Court, vide order dated 06.08.2024 after hearing learned counsel for the petitioner/applicant as well as learned counsel for the respondents, had dismissed the revision petition i.e., CR-17-2022, in which, prayer was made for setting aside the ex-parte order dated 07.12.2021 (Annexure P-6 thereto) passed by the Additional Civil Judge (Sr.Div.), Garshankar, District Hoshiarpur, whereby the application filed by respondent no.1 under Order 21 Rule 32 CPC was allowed on account of violation of the order dated 29.03.2017.

3. While dismissing the said revision petition, this Court had taken into consideration the brief facts of the case which were that the petitioner had filed a suit for permanent injunction restraining the defendants-respondents from interfering in the peaceful possession of the plaintiff in the property marked as ABCD which was shown in red colour in the site plan and was measuring 22 kanals 19 marlas and this Court had also taken into consideration the fact that respondent no.1 (defendant no.1) had filed a counter claim seeking permanent injunction restraining the plaintiff/present petitioner from interfering into the lawful and peaceful possession of the counter claimants of the land measuring 34 kanals 19 marlas bearing khasra no.3311/3223/2522/7, 3222/2522, 3310/3223/2522, 3221/2522/1 marked as LMNOPQ shown in red and blue colours in the attached site plan. It was further noticed that the Additional Civil Judge (Sr.Div.), Garshankar vide judgment and decree dated 29.03.2017 with respect to the counter claim, had restrained the present petitioner/plaintiff



from interfering in the said land measuring 34 kanals 19 marlas which was marked as LMNOPQ and shown in red and blue colour in the attached site plan.

4. This Court had also taken note of the fact that the respondent No.1-decree holder/counter claimant had filed an application under Order 21 Rule 32 read with Section 151 CPC stating that the present petitioner/Judgment Debtor in the counter claim had encroached upon the land marked as ABCD shown in red colour in the site plan attached along with the application, from the land regarding which the injunction had been passed in favour of the counter claimant and the same had been done in the evening on 30.04.2017 and had thus, violated the order of injunction. After noticing the fact that reply dated 07.10.2017 had been filed by the present petitioner to the said application and also the fact that the Additional Civil Judge (Sr.Div.), Garhshankar, District Hoshiarpur vide order dated 07.12.2021 after taking into consideration the evidence led by respondent no.1 had allowed the application filed by respondent No.1, this Court had dismissed the main revision petition with the following observations:-

*“10. This Court has heard the learned counsel for the parties and has perused the paper book.*

*11. It is not in dispute that the petitioner had filed a reply to the application filed by respondent no.1 under Order 21 Rule 32 CPC read with Section 151 CPC and thereafter had led no evidence and rather was proceeded against ex-parte. The Executing Court, after framing issues and also after considering the evidence on record i.e., of AW-1 Hazara Singh, AW-2 Kuldeep Singh and AW-3 Kashmir Singh Sadar Kanugo, Tehsil Office Hoshiarpur and after considering the detailed*



*facts and circumstances of the case, came to the conclusion that the petitioner had violated the judgment and decree passed in favour of respondent no.1 with respect to the counter claim and had encroached upon the property of respondent no.1 herein. Nothing has been shown to this Court that the order dated 07.12.2021 is perverse or illegal or is based upon misreading of the evidence. Even the site plan, on the basis of which the judgment and decree dated 29.03.2017 was passed, has not been placed on record to clearly show as to what land was decreed in favour of the counter claimant and also the petitioner. The site plan dated 02.05.2017 has been placed on record as Annexure P-7 but apparently the same is subsequent to the judgment and decree dated 29.03.2017 and learned counsel for the petitioner has not been able to clarify as to in which proceeding the said site plan was exhibited. At any rate, no evidence was led by the petitioner before the Executing Court to rebut the stand of respondent no.1 which was substantiated by evidence led by him. Thus, it is not open to the petitioner to raise plea for the first time before this Court moreso when, there is no evidence led by the petitioner before the Executing Court.*

*12. Keeping in view the above said facts and circumstances, this Court is of the opinion that the impugned order dated 07.12.2021 (Annexure P-6) passed by the Executing Court is legal and in accordance with law and the present petition is meritless and deserves to be dismissed and is accordingly dismissed.”*

5. The applicant/petitioner has brought to the notice of this Court that against the said order, the petitioner had filed Special Leave to Appeal (C) No.21189 of 2024, which was disposed of with the following observations:-



*“We have heard learned counsel for the petitioner.*

*We dispose of this special leave petition by reserving Liberty to the petitioner herein to file a review petition before the High Court, if so advised.*

*It is needless to observe that if a review petition is filed by the petitioner herein before the High Court, the same shall be considered on its own merits, and as expeditiously as possible.*

*Pending application(s), if any, shall also stand disposed of.”*

6. The sole argument raised on behalf of learned counsel for the petitioner for reviewing/recalling the order dated 06.08.2024, is to the effect that the petitioner was wrongly proceeded against ex-parte before the Executing Court in the proceedings under Order 21 Rule 32 CPC and the said ex-parte order deserves to be set aside and the petitioner deserves to be granted an opportunity to lead his evidence before the Executing Court so as to establish his defence. In support of his argument, learned counsel for the applicant has relied upon the order dated 20.01.2022 passed by the Division Bench of this Court and has highlighted sub clause (iv) of the directions issued therein which is reproduced hereinbelow:-

*“iv) that it is further directed that the orders of eviction, dispossession, demolition, etc. passed by this Court or any Court subordinate to it or any Tribunal or Judicial or Quasi Judicial forum, which have so far remained unexecuted, shall remain in abeyance till 28.02.2022;”*

7. This Court has heard learned counsel for the review applicant/petitioner and has perused the paper book and finds that the present review application deserves to be dismissed on the following



grounds, in addition to the observations made in the order dated 06.08.2024 passed in CR-17-2022:-

- i) The argument now sought to be raised in the present review application was never raised at the time of adjudicating the main revision petition on 06.08.2024. The sole argument raised at the time of adjudicating the revision petition on 06.08.2024 has been noticed in para 8 of the said order, which was on merits and was to the effect that the petitioner had not made any encroachment and that on the said ground, the revision petition should be allowed. No submission was made to the effect that the said ex-parte order deserves to be set aside or that the said order was not in accordance with law and thus, the said argument is now sought to be raised for the first time in the present review application.
- ii) On a pointed query, learned counsel for the review applicant/petitioner has very fairly submitted that the said order of being proceeded against ex-parte, as is apparent from the order dated 07.12.2021 (Annexure P-6), was passed prior to the order dated 07.12.2021 but however the said order has neither been annexed nor any date of the said order has been mentioned. Only the ex-parte final order dated 07.12.2021 has been annexed along with the main revision petition. The question of thus setting aside an order which has not been placed on record nor has been challenged does not arise.
- iii) It has not been disputed that in the proceedings under Order 21 Rule 32 CPC, the present petitioner was duly served and even had filed a reply dated 07.10.2017 and thus, there is no justifiable reason for



setting aside the said ex-parte judgment/order and moreover no law has been cited on behalf of the petitioner in support of the argument that the said ex-parte order/judgment deserves to be set aside.

8. Reliance placed upon the order dated 20.01.2022 (Annexure A-3) by learned counsel for the review applicant/petitioner would not further the case of the applicant for the purpose of recalling the order dated 06.08.2024 and also for allowing the revision petition inasmuch as the said order was neither placed on record in the original revision petition nor was it referred to at the time of adjudication of the revision petition on 06.08.2024. Moreover, the said order of the Division Bench is dated 20.01.2022 and a perusal of the same, more so clause (iv) which has been highlighted by the learned counsel for the petitioner would show that the orders of eviction/dispossession, demolition, etc. which had not been executed were ordered to be kept in abeyance till 28.02.2022. No earlier order passed by the Division Bench with respect to any such direction has been referred to or even annexed along with the present review application. It would be relevant to note that in the present case, the judgment and decree, which as per the case of the counter claimant has been violated, was passed on 29.03.2017. The application under Order 21 Rule 32 read with Section 151 CPC was filed by the counter claimant/respondent on 18.05.2017 and the petitioner had filed a reply to the said application on 07.10.2017. Neither the order, vide which the petitioner was proceeded against ex-parte (as has been stated hereinabove and very fairly stated by learned counsel for the applicant-petitioner), has been produced on record nor the date of the same has been mentioned by the petitioner. At any rate, it



is vide judgment dated 07.12.2021 that the final order on the application under Order 21 Rule 32 CPC was passed and thus, all the above was prior to the passing of the order dated 20.01.2022 passed by the Division Bench of this Court.

9. Importantly, it would be relevant to note that even as per the said order, orders of eviction/dispossession, demolition etc. were to be kept in abeyance till 28.02.2022, and thus, the benefit was granted only till 28.02.2022 and nothing has been placed on record to show that the said benefit was extended any further. A perusal of the judgment dated 07.12.2021 would show that the petitioner was granted one month's time to remove the encroachment made by the present petitioner upon the land, failing which further action was to follow. It was not the case of the petitioner at the time of arguing the revision petition or even now that some more time be granted to the petitioner to comply with the said direction in the order dated 07.12.2021 rather the order was sought to be challenged on merits, which this Court after hearing both the parties, had dismissed on 06.08.2024.

10. Keeping in view the abovesaid facts and circumstances, this Court finds that there is no ground to review the order dated 06.08.2024 and accordingly, the present review application is dismissed.

**16.12.2024**  
*Pawan*

**(VIKAS BAHL)**  
**JUDGE**

**Whether speaking/reasoned:-** **Yes/No**

**Whether reportable:-** **Yes/No**