

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

**Reserved on: 19.03.2025
Pronounced on: 01.04.2025**

I. **CR-1370-2007 (O&M)**
SMT. SHASHI GUPTA (DECEASED)
THROUGH HER LR_s
..... PETITIONER

Vs.

NARINDER KUMAR SOOD (DECEASED)
THROUGH HIS LR_s AND OTHERS
..... RESPONDENTS

II. **CR-7210-2019(O&M)**
SMT. SHASHI GUPTA (DECEASED)
THROUGH HER LR_s
..... PETITIONER

Vs.

NARINDER KUMAR SOOD (DECEASED)
THROUGH HIS LR_s AND OTHERS
..... RESPONDENTS

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued by:- Mr. Pawan Kumar, Sr. Advocate, with
Ms. Vidushi Kumar, Advocate, for the petitioner.

Mr. Amit Jain, Sr. Advocate, with
Mr. Parit Aggarwal, Advocate,
for respondent No.1 (CR-1370-2007) and
for respondents No.1 to 3 (in CR-7210-2019)

DEEPAK GUPTA, J.

This order shall dispose of two Civil Revisions titled above, as both of them pertain to the same property, and the dispute is between the same parties.

2. Before taking up the impugned orders as have been challenged by way of these petitions, it would be apt to mention the status of parties

before courts below and also certain brief facts of the case. To avoid confusion, parties shall be referred as per their status before the trial Court concerned.

3 Narinder Kumar Sood (*respondent No.1 herein through his legal representatives*) was the plaintiff before the Trial Court in Civil Suit No.590 of 1994 titled 'Narinder vs. Goverdhan'. Goverdhan Dutt (*respondent No.2 through his legal representatives herein*) was the defendant before the trial Court in this suit. He was the owner of the property in dispute. Smt. Shashi Gupta (*petitioner herein through her legal representatives*) is the third party objector.

4. The perusal of paper book & trial court record reveals that based upon an agreement to sell dated 07.12.1990, plaintiff Narinder Kumar Sood instituted the above Civil Suit No.590 of 1994 **on 08.09.1994** for specific performance regarding suit property against defendant-Goverdhan Dutt. At the stage of plaintiff's evidence, Goverdhan Dutt - the defendant of that case, was proceeded *ex parte*. After trial, the suit was decreed on **13.10.1997**. As it turned out, during pendency of the suit, defendant-Goverdhan Dutt had sold the suit property to one Malkiat Kaur vide sale deed dated **13.09.1994** and said Malkiat Kaur further sold the suit property to Smt. Shashi Gupta (*petitioner*) on **09.11.1994**. In order to get the sale deed executed pursuant to the decree dated **13.10.1997** in his favour, Narinder Kumar Sood filed execution, during which sale deed dated **21.08.1998** in his favour was executed by Goverdhan Dutt (Judgment debtor) through the reader of the Court, as appointed by the Court. Warrants of possession were issued in his favour.

5. It is in the aforesaid backdrop that Shashi Gupta started availing three different remedies. First of all, she moved a Misc. Application No.4 of 1999 under Order IX Rule 13 CPC for setting aside the *ex parte* decree dated 13.10.1997. Said application was dismissed on 20.07.1999. Against that order, Shashi Gupta filed Civil Revision No.2285 of 2004, which was initially admitted on 04.05.2004, but ultimately it was disposed of as

infructuous on 27.09.2019 on account of the fact that third party objections as filed by the petitioner Shashi Gupta in the execution petition, had already been dismissed.

6.1 The second remedy availed by the petitioner-Shashi Gupta i.e. third party objector was by filing a separate Civil Suit No.214 of 1999, against Narinder Kumar Sood, Goverdhan Dutt and Malkiat Kaur i.e. her vendee. She challenged the decree dated 13.10.1997 to be null and void and not binding on her rights. In the said suit, she also moved an application for temporary injunction under Order 39 Rule 1 & 2 CPC, which was dismissed by the trial Court on 10.02.2000 and then the appeal filed by her against that order was dismissed by the Appellate Court on 02.02.2002. The main suit No. CS No.214 of 1999 titled 'Shashi Gupta Vs. Narinder Kumar Sood & others' itself was dismissed in default on 26.09.2003.

6.2 On 13.01.2006, petitioner moved Misc. Application No.2 of 2006 for restoration of the aforesaid Civil Suit No.214 of 1999, which was hotly contested. Issues were framed and evidence was recorded. Ultimately, said application for restoration was dismissed on 19.12.2012. Against this order, petitioner initially filed Civil Revision No.753 of 2013 before this High Court but that was dismissed as withdrawn vide order dated 02.09.2015 after taking liberty to file appeal. Petitioner then filed appeal against the order dated 19.12.2012, which has been dismissed by the Appellate Court on 22.08.2019.

7. The third remedy availed by the petitioner was in the form of third party objections filed by her against the warrants of possession in the execution, which was filed by plaintiff-decree holder Narinder Kumar Sood for implementation of the decree dated 13.10.1997 passed in his favour in Civil Suit N: 590 of 1994. However, her objections were dismissed vide order 04.03.2006 by the Executing Court.

8. Against the abovesaid order dated 04.03.2006, whereby third party objections of the petitioner Shashi Gupta were dismissed in the execution of the decree holder Narinder Kumar Sood, present **Civil Revision**

No.1370 of 2007 has been filed; whereas, order dated 22.08.2019 passed by the Appellate Court, whereby the order dated 19.12.2012 of trial court was upheld, dismissing the restoration application of Civil Suit N: 214 of 1999, has been challenged by the petitioner by way of another present **CR No.7210 of 2019**.

9. Assailing the order dated 04.03.2006 in CR-1370-2007, it is contended by Ld. Sr. Advocate for the petitioner that suit filed by Narinder Kumar Sood against defendant Goverdhan Dutt was a collusive suit based upon a fake and fabricated agreement to sell dated 07.12.1990. Defendant-Goverdhan Dutt had not contested that case and was proceeded *ex parte*; that petitioner Shashi Gupta is the bonafide purchaser of the suit property for value and consideration, inasmuch as she spent more than ₹17 lakh in raising construction on the suit property. Not only this, she had also paid the mortgage amount, which had been taken by Goverdhan Dutt from the bank. It is contended that mutation in the name of the petitioner-Shashi Gupta had already been sanctioned based upon the sale deed in her favour and therefore, the third party objections should not have been dismissed.

10. Assailing the order dated 19.12.2012 of the trial Court and the subsequent order dated 22.08.2019 of the Appellate Court in CR No.7210 of 2019, it is contended by Ld. Sr. counsel that Civil Suit No.214 of 1999 filed by Shashi Gupta was dismissed in default on 26.09.2003 because her counsel had not informed her about the proceedings of the case. Petitioner was under the impression that as she had filed revision before this Court against the dismissal of her application for temporary injunction, so the trial Court record must have been called by the High Court and so, her presence was not required. Ld. Sr. Counsel contends that as soon as the petitioner came to know about the dismissal in default of the suit, she moved the application for restoration and therefore, her application has been wrongly dismissed.

11. Strongly opposing both the petitions, it is contended by Ld. Sr. counsel for the respondent-decree holder that petitioner is a purchaser

pendente lite from Malkiat Kaur, who was also a purchaser *pendente lite* from the defendant – judgment debtor Goverdhan Dutt and as such, the third party objections as filed by the petitioner are not maintainable in view of Order XXI Rule 102 CPC. The sale in her favour is clearly hit by Section 52 of the Transfer of Property Act and that she cannot be protected by claiming to be *bona fide* purchaser, as the decision of the suit against her vendor is binding upon her.

12. Ld. Sr. counsel has then drawn attention towards the findings of the trial Court as well as the Appellate Court as observed in the order dated 19.12.2012 and 22.08.2019 that petitioner was well aware of the fact of dismissal in default of the Civil Suit No.214 of 1999 filed by her. She had candidly admitted that she had been contacting her advocate. Not only this, she had candidly admitted that in 2005 her counsel had informed her about the dismissal of the suit, but still she preferred to move the application for restoration of the suit in January 2006, though the suit in question was dismissed in default under Order IX Rule 8 CPC way back on 26.09.2003 and as such, the application was clearly barred by limitation and had been moved with the *mala fide* intention to stall the execution proceedings.

13. With the aforesaid submissions, learned Sr. counsel has prayed for dismissal of both the revisions.

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

CR 1370-2007:

15. Factual position is not in dispute that suit for specific performance based on agreement to sell dated 07.12.1990 was filed by Narinder Kumar Sood against Govardhan Dutt on 08.09.1994 and it is during the pendency for the suit that Govardhan Dutt sold the suit property on 13.09.1994 to Smt. Malkiat Kaur, who further sold the same to petitioner Smt. Shashi Gupta on 09.11.1994. Thus, undisputedly petitioner is a transferee *pendente lite*. Suit of plaintiff (*now respondent – decree-holder*)

Narinder Kumar Sood was decreed on 13.10.1997. Sale deed pursuant to that decree has already been executed on 21.8.1998.

16. The question is as to whether the third party objections as filed by the petitioner Smt. Shashi Gupta against the warrant of possession of the suit property pursuant to the decree dated 13.10.1997, are maintainable. Petitioner contends that her objections are maintainable under Order XXI Rule 97 CPC, whereas the contention of Id. counsel for the respondent is that objections are not maintainable in view of Order XXI Rule 102 CPC, inasmuch as the petitioner-third party objector is the transferee *pendente lite*.

17. Order XXI Rule 97 CPC reads as under: -

“97. Resistance or obstruction to possession of immovable property.—(1)

Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

(2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.”

18. The aforesaid provision entitles the decree-holder to approach the Executing Court, when obstruction is caused by any person in obtaining possession. Said application is to be adjudicated upon by the Executing Court in accordance with law.

19. Order XXI Rule 99 CPC reads as under: -

‘99. Dispossession by decree-holder or purchaser.—(1) Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof,

he may make an application to the Court complaining of such dispossession.'

(2) Where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

20. The aforesaid provision is to be availed of by any person, other than the judgment-debtor [*third party objector*], when he is dispossessed of the immoveable property by the holder of the decree. The provision entitles such a person to approach the Court and complain of his dispossession. Under this provision, any person can claim an independent right in case he is being dispossessed and in such an event, the person can complain of dispossession to the executing Court and it is to be adjudicated upon by the Executing Court.

21. Order XXI Rule 101 CPC provides as to what questions are to be determined by the Courts, while considering the applications filed either under Rule 97 or 99 CPC. The rule reads as under: -

'101. Question to be determined.—All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.'

22. The aforesaid Rule makes it clear that:

- (i) The questions to be determined may even relate to right, title or interest in the property.
- (ii) The question should be between parties to the proceedings on an application under Rule 97 or 99 CPC or their representatives.
- (iii) No separate suit shall lie so as to adjudicate upon those questions.
- (iv) Questions should be relevant to the adjudication of the application.

- (v) Court will have jurisdiction to determine all the questions, notwithstanding anything to the contrary contained in any other law for the time being in force.

23. Order XXI Rule 98 of the CPC reads as under: -

‘98. Orders after adjudication.—(1) Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination and subject to the provisions of sub-rule (2),—

(a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(b) pass such other order as, in the circumstances of the case, it may deem fit.

(2) Where, upon such determination, the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days.’

24. The aforesaid Rule 98 of Order XXI CPC is to be read in the context of Rule 97 and 101 of the CPC. Under the said Rule, after determination of the questions as referred in Section 101 CPC in accordance with law, on the application which had been moved by the decree-holder under Rule 97, the Court may allow the application by directing the decree-holder/applicant to be put in possession of the property; or dismiss his application or pass such order as in the circumstances of the case, it may deem fit.

25. Order XXI Rule 100 CPC reads as under: -

‘100. Order to be passed upon application complaining of dispossession.—Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination,—

- (a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or
- (b) pass such other order as, in the circumstances of the case, it may deem fit.’

26. Aforesaid Rule 100 of Order XXI CPC is to be read in the context of Rules 99 and 101 CPC. Under the said rule, upon determination of the questions, as referred to in Rule 101 CPC in accordance with law, on the application which had been moved by any person other than the judgment-debtor [*third party objector*] under Rule 99, the Court may allow the application by directing the said third party to be put in possession of the property; or dismiss the application or pass such order in the circumstances, as it may deem fit.

27. As will be apparent upon perusal of the aforesaid provisions, Rule 101 CPC simply provides as to what questions are to be determined by the Court. Under Rule 98 CPC, the Court is required to determine the questions, which are raised by the decree-holder; whereas, under Rule 100 CPC, the Court is required to determine the questions, which are raised by any third party.

28. Now, let us see Order XXI Rule 102 CPC, which is very important being relevant to the present case. It reads as under: -

‘102. Rules not applicable to transferee pendente lite —Nothing in rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgement-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.

Explanation.—In this rule, “transfer” includes a transfer by operation of law.’

29. The bare perusal of the aforesaid Rule 102 would clearly indicate that Order XXI Rule of 98 to be read with Rule 100 are not applicable to the case of transferee *pendente lite*. In other words, although the questions raised by the decree-holder under Rule 97 CPC or the questions as raised by the third party under Rule 99 CPC are to be adjudicated upon under Rule 98 or 100 CPC, as the case may be, but no such questions are to be determined as per Rule 102 CPC, in case the resistance or obstruction in execution of the decree for possession of the property is made by a person, to whom the judgment debtor has transferred the property after the institution of the suit, in which the decree was passed or to the dispossession of any such person.

30. Explaining the scope of Order XXI Rule 102 in ***Usha Sinha Vs. Dina Ram, 2008 (3) RCR (Civil) 145***, it has been observed by Hon’ble Supreme Court: -

“12. Bare reading of the rule makes it clear that it is based on justice, equity and good conscience. A transferee from a judgment debtor is presumed to be aware of the proceedings before a Court of law. He should be careful before he purchases the property which is the subject matter of litigation. It recognizes the doctrine of lis pendens recognized by Section 52 of the Transfer of Property Act, 1882. Rule 102 of Order XXI of the Code thus takes into account the ground reality and refuses to extend helping hand to purchasers of property in respect of which litigation is pending. If unfair, inequitable or undeserved protection is afforded to a transferee *pendente lite*, a decree holder will never be able to realize the fruits of his decree. Every time the decree holder seeks a direction from a Court to execute the decree, the judgment debtor or his transferee will transfer the property and the new transferee will offer resistance or cause obstruction. To avoid such a situation, the rule has been enacted.

18. It is thus settled law that a purchaser of suit property during the pendency of litigation has no right to resist or obstruct execution of decree passed by a competent Court. The doctrine of 'lis pendens' prohibits a party from dealing with the property which is the subject matter of suit. 'Lis pendens' itself is treated as constructive notice to a purchaser that he is bound by a decree to be entered in the pending suit. Rule 102, therefore, clarifies that there should not be resistance or obstruction by a transferee pendente lite. It declares that if the resistance is caused or obstruction is offered by a transferee pendente lite of the judgment debtor, he cannot seek benefit of Rule 98 or 100 of Order XXI.

19. In ***Silverline Forum Pvt. Ltd. v. Rajiv Trust, (1998) 3 SCC 723***, this Court held that where the resistance is caused or obstruction is offered by a transferee pendente lite, the scope of adjudication is confined to a question whether he was a transferee during the pendency of a suit in which the decree was passed. Once the finding is in the affirmative, the Executing Court must hold that he had no right to resist or obstruct and such person cannot seek protection from the Executing Court.

20. The Court stated;

"It is true that Rule 99 of Order 21 is not available to any person until he is dispossessed of immovable property by the decree-holder. Rule 101 stipulates that all questions "arising between the parties to a proceeding on an application under rule 97 or rule 99" shall be determined by the executing court, if such questions are "relevant to the adjudication of the application". A third party to the decree who offers resistance would thus fall within the ambit of Rule 101 if an adjudication is warranted as a consequence of the resistance or obstruction made by him to the execution of the decree. No doubt if the resistance was made by a transferee pendente lite of the judgment debtor, the scope of the adjudication would be shrunk to the limited question whether he is such transferee and on a finding in the affirmative regarding that point the execution court has to hold that he has no right to resist in view of the clear language contained in Rule 102. Exclusion of such a transferee from raising

further contentions is based on the salutary principle adumbrated in Section 52 of the Transfer of Property Act." (emphasis supplied)
[See also Sarvinder Singh v. Dalip Singh, (1996) 5 SCC 539]

21. We are in respectful agreement with the proposition of law laid down by this Court in ***Silverline Forum***. In our opinion, the doctrine is based on the principle that the person purchasing property from the judgment debtor during the pendency of the suit has no independent right to property to resist, obstruct or object execution of a decree. Resistance at the instance of transferee of a judgment debtor during the pendency of the proceedings cannot be said to be resistance or obstruction by a person in his own right and, therefore, is not entitled to get his claim adjudicated.

22. For invoking Rule 102, it is enough for the decree holder to show that the person resisting the possession or offering obstruction is claiming his title to the property after the institution of the suit in which decree was passed and sought to be executed against the judgment debtor. If the said condition is fulfilled, the case falls within the mischief of Rule 102 and such applicant cannot place reliance either on Rule 98 or Rule 100 of Order XXI."

[underlined portion emphasized by this court]

31. Thus, the legal position as explained by Hon'ble Supreme Court makes it clear that a purchaser of suit property during the pendency of litigation has no right to resist or obstruct execution of decree passed by a competent Court. The doctrine of '*lis pendens*' prohibits a party from dealing with the property, which is the subject matter of suit. '*Lis pendens*' itself is treated as constructive notice to a purchaser that he is bound by a decree to be entered in the pending suit. A transferee from a judgment debtor is presumed to be aware of the proceedings before a Court of law. He should be careful before he purchases the property, which is the subject matter of litigation. Order XXI Rule 102 CPC recognizes the doctrine of *lis pendens* recognized by Section 52 of the Transfer of Property Act, 1882.

32. In the present case, as has already been noticed that the petitioner/third party objector Shashi Gupta had purchased the suit

property after institution of the suit by the decree holder-Narender Sood. As such, Rule 102 CPC of Order XXI CPC debars the Executing Court from entertaining the objections as filed by such an objector. The Court is not required to determine any questions as raised by such third party objector, who is a transferee *pendente lite*. Once it is found that petitioner is a transferee *pendente lite*, Rule 102 CPC debars the Executing Court to determine any question raised by her as untenable under Order XXI Rule 98 and 101 CPC, as these Rules will not be applicable in such a case and as such, there was no question of adjudication on merits of the objections to the execution filed by the petitioner.

33. Consequent to the legal and factual position as above, this Court has no hesitation to conclude that the third party objections filed by Smt. Shashi Gupta were not maintainable in view of Order XXI Rule 102 CPC and as such Id. Executing Court has rightly dismissed her objection by way of the impugned order dated in 04.03.2006. Resultantly, **CR No.1370 of 2007** is hereby **dismissed**.

34. Coming to **CR No.7210 of 2019**, Civil Suit No.214 of 1999 as filed petitioner Smt. Shashi Gupta against Narinder Kumar Sood, Govardhan Dutt and Malkiat Kaur was dismissed in default on 26.09.2003 under Order IX Rule 8 CPC. Prior thereto, her application seeking temporary injunction under Order XXXIX Rule 1 & 2 CPC was dismissed on 10.02.2000 and appeal against that order was dismissed by the Appellate Court on 02.02.2002. The petitioner moved application for restoration of the suit and to set aside the order dated 26.09.2003 by moving the necessary application on 13.01.2006. Article 122 of the Limitation Act provides a period of 30 days to file an application for restoration of suit dismissed in default for appearance and the period starts from the date of dismissal. However, in the present case, though the suit was dismissed in default on 26.03.2003 but the application for restoration was moved on 13.01.2006 i.e. after more than 2 years and 3 months.

35. It was pleaded by the petitioner that after dismissal of her appeal against the dismissal of the stay application by the Appellate Court, she had approached the High Court and she was under the impression that the Court of lower Court had been requisitioned by this High Court and that her counsel did not inform her about the status of the case and that she was not aware that suit was pending for 26.09.2003. She claimed her absence on 26.09.2003 to be non- intentional and non-deliberate. However, the respondent-Narinder Kumar Sood disputed the said facts. The trial Court framed necessary issues on the aforesaid application and the evidence produced by the parties was taken on record. After appreciating the evidence, the application was dismissed and the appeal against that has been dismissed by the First Appellate Court.

36. It will be relevant to reproduce the observations as made by the First Appellate Court, while dismissing the appeal of the petitioner, which read as under:

“By way of present appeal, the appellant/plaintiff Shashi Gupta has challenged the order in question dated 19.12.12 vide which the application filed by her for restoration of suit was declined. The main averment of counsel for appellant/plaintiff Shashi Gupta is that she was not made aware about the proceedings before the learned lower court by the counsel. It is further averment of appellant/plaintiff Shashi Gupta that she was under the impression that the record of learned lower court had been requisitioned by the Hon'ble High Court and, thus, non-appearance of appellant/plaintiff in the learned lower court on 26.9.13, was neither intentional nor deliberate. However, perusal of entire evidence on record reveals that the application for restoration of suit was filed after a gap of 2-1/4 years. A careful perusal of entire record would go to reveal that the stay application moved by Shashi Gupta before the regular court stood dismissed on 10.2.2000, whereas, the appeal filed by her was further dismissed by the then learned Additional District Judge, Ludhiana, on 2.2.02, and, wherein, the parties were categorically directed to appear before the learned lower court on 12.2.02. Perusal of record further

reveals that appellant/plaintiff Shashi Gupta had been consequently appearing before the court from 12.2.02 to 26.9.03 when the case was dismissed in default. Thus, in these circumstances, it cannot be stated that the appellant/plaintiff Shashi Gupta had no knowledge about the proceedings before the learned lower court, which is the basis of appellant/plaintiff Shashi Gupta in filing the application for restoration of suit as well as the present appeal. Furthermore, the appellant/plaintiff Shashi Gupta while stepping into the witness box as AWI candidly admitted that she had filed the appeal against order of learned lower court vide which her stay application stood dismissed. She had failed to specifically deny suggestions put to her by the opposite counsel that she (Shashi Gupta) had been approaching her counsel. This all goes to imply that the application for restoration of suit dismissed in default was an afterthought. Shashi Gupta as AWI has further admitted that she had filed an appeal before the Hon'ble High Court besides further admitting that in the year 2005, she was told by her counsel that her civil suit had been dismissed. In these circumstances, the learned lower court has rightly observed that the appellant/plaintiff Shashi Gupta had not been keeping the track of the proceedings of the case which resulted into dismissal of the suit ultimately. It is a well settled law that a party is himself or herself duty bound to keep track of the proceedings. The learned lower court has rightly dismissed the application for restoration of suit."

37. It is evident from the aforesaid observations based on evidence that petitioner-Shashi Gupta had been regularly appearing before the Court from 12.02.2002 onwards, when the case was dismissed in default and so, it cannot be assumed that petitioner had no knowledge about the proceedings before the trial Court. Not only this, there was candid admission of the petitioner that she had filed appeal against the order of the trial Court by which her stay application was dismissed. She failed to deny the suggestion put by the opposite counsel that she had been approaching her counsel, which clearly implied that application for restoration of suit as dismissed in default was just an after-thought to stall the execution proceedings. Not only this, petitioner candidly admitted that

she had filed appeal before the High Court besides admitting that in 2005 itself she had been told by her counsel that her civil suit had been dismissed. In these circumstances, the trial Court and then the Appellate Court have rightly observed that petitioner Shashi Gupta was well aware of the proceedings and it could not be assumed that her absence on 26.09.2003 was non-intentional.

38. Apart from above, it has been rightly observed that as per the settled position, it is for the party to keep track of the proceedings. Petitioner cannot be allowed to take shelter by putting blame upon her counsel that she was not made aware of the proceedings, particularly when the petitioner was pursuing the proceeding before the trial Court and was also opposing the third party objections before the Executing Court, in the Execution petition, which had been initiated by the decree holder.

39. As such, this Court does not find any illegality or perversity in the impugned order dated 22.08.2019 as passed by the Appellate Court, upholding the order dated 19.12.2012 of the trial Court, dismissing the application for restoration of the suit.

40. Consequently, CR No.7210 of 2019 is also dismissed.

 Pending application(s), if any, also stands disposed of.

 A photocopy of this order be placed on the file of connected case.

01.04.2025

Vivek

(DEEPAK GUPTA)

JUDGE

Whether speaking/reasoned?

Whether reportable?

Yes

Yes