

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****214****CR-884-2019(O&M)****Date of decision: 18.07.2025****Krishan Baldev @ Krishan Nath & Another****...Petitioners(s)****Vs.****Gugga Marri Parbandhak & Another****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. S.K. Arora Advocate
for the petitioners.

Mr. K.B. Raheja, Advocate
Mr. Vikrant Sharma, Advocate
for the respondent No.1.

NIDHI GUPTA, J.

Present Revision Petition has been filed by the judgment debtor under Article 227 of the Constitution of India read with Section 115 of the Code of Civil Procedure for quashing/setting aside the order dated 19.1.2019 (Annexure P-1) passed by Additional Civil Judge (Senior Division), Faridkot in Execution Application No. 44 dated 14.3.2014 titled as "Gugga Marri Parbandhak Society Vs. Krishan Baldev and others", vide which the objections filed by the petitioners/judgment debtors, have been dismissed.

2. Learned counsel for the petitioners/judgment debtors submits that learned Executing Court was in patent error in dismissing the objections of the petitioners as it failed to appreciate that the decree under execution



is not executable being barred by limitation. It is submitted that as per law, a decree for mandatory injunction can only be executed within a period of three years from the date of the decree. In the present case, the decree under execution had been passed on 09.09.2008; whereas Execution Petition had been filed by the plaintiff/decreed holder on 11.11.2008. Therefore, the Execution Petition was barred by limitation. However, this fact has not been taken into consideration while passing the impugned order.

3. Learned counsel further submits that the learned Courts below also failed to appreciate that the judgment and decree dated 9.9.2008 had been obtained by the plaintiff/decreed holder ex parte on the basis of forged and fabricated record. Thus too, the decree was not executable. Learned counsel accordingly prays for setting aside of the impugned order.

4. Learned counsel for the respondents/decreed holders vehemently opposes the submissions made on behalf of the petitioners and submits that the impugned order suffers from no error whatsoever. The objections filed by the petitioners have been considered in depth by the learned Additional Civil Judge (Senior Division), Faridkot. Even relevant case laws have been discussed at great length before passing the impugned order. Therefore, the impugned order suffers from no error; and the present Revision Petition deserves to be dismissed.

5. No other argument is made on behalf of the parties.



6. I have heard learned counsel and perused the case file in detail.

I find no merit in the submissions made on behalf of the petitioners.

7. A few important dates are necessary to notice. The present suit was filed against the petitioners/defendants/judgment debtors on 22.07.2006. Notice was served upon the petitioners and they engaged counsel and filed reply; and even 4 opportunities were availed for leading evidence. Subsequently, vide order dated 28.07.2008, petitioners were proceeded against ex parte. A decree for mandatory injunction and permanent injunction was passed against the petitioners on 09.09.2008. Application for setting aside the ex parte decree was filed on 24.01.2009 under Order 9 Rule 13 CPC. After framing of issues and conducting trial, the said application of the petitioners was dismissed by the learned trial Court vide order dated 03.09.2016. Appeal filed by the petitioners against the order dated 03.09.2016 was dismissed by the learned District Judge on 18.05.2018. It may be pointed out that the Learned First Appellate Court after re-appreciating the facts and the evidence available on the file has recorded a finding that the petitioners had been taken a contradictory stand while explaining the reasons for ex parte proceedings. In respect of petitioner no.2, the Id. First Appellate Court has recorded as under: -

“Rather she has further admitted that she has no where averred in application that her counsel has not returned the brief. Meaning thereby, she is the applicant, who tried to explain delay of 135 days, by shifting burden upon her counsel,



but at the same time, contradictory statement of AW1 Chanchal (appellant) is sufficient to show that she is blowing hot and cold in the same breath, which is not helpful to her, specially in those circumstances, when in further cross-examination, she has categorically admitted that “the day when exparte order was passed, I came to court to contest case.” Again she tried to riggal (SIC wriggle) out from her testimony by saying that her counsel had not allowed to produce her in the court. She has further admitted that “it is correct that exparte proceedings was conducted due to her own fault”. Meaning thereby, she is AW1 Chanchal (appellant) who kept on shifting her stand on each and every step, but truth oozed out from her mouth, when she admitted her presence in the court complex, on the day when she was proceeded against exparte, and when exparte judgment and decree was passed.””

8. The RSA filed by the petitioners against the above said order dated 18.5.2018, was also dismissed by this Court on 13.07.2018. In the interregnum, the respondent/decree holder had filed an Execution Application dated 14.03.2014 (Annexure P3); to which the petitioners filed objections dated 18.08.2018 (Annexure P4); and respondent filed reply to the objections on 03.12.2018 (Annexure P5). Vide the impugned order dated 19.01.2019, objections of the petitioners have been dismissed. First and foremost, the above chronological sequence of events makes it clear that the Execution Petition filed by the respondent cannot, by any stretch of the



imagination, be held to be barred by limitation. The facts noted above would also support the observations recorded in the impugned order that after examining the material available on record and the relevant case law with *“...due care and circumspection, I find the objections under consideration nothing but mere a last-ditch effort on the part of the JDs to prevent the decree-holder from reaping the fruit of the decree passed in his favour.”*

9. Besides this, the order of the learned trial Court had merged in the order of the Appellate Courts. Therefore, the execution filed by the respondents was rightly treated to be within limitation.

10. Furthermore, in the present case, the decree under execution directed delivery of possession of suit premises to be given by petitioners to respondent within 2 months; and permanently restrained petitioners from entering upon suit premises. There was no specific direction in the decree to be carried out by petitioners, which can be said to be in nature of mandatory injunction. Thus, it cannot be said that Article 135 is attracted to the decree under execution. If Article 135 does not apply to the case, then Article 136 applies and said provision prescribes 12 years for execution of any decree or order of Civil Court and proviso expressly provides that there will be no period of limitation for enforcement of direction for permanent injunction. Hence, question of limitation does not arise in the present case.



11. I find support in my view from judgment of this Court in **Kuldip Kaur v. Satnam Singh (P&H): Law Finder Doc ID # 966143**; wherein it is held that: -

“Civil Procedure Code, 1908, Order 21, Rule 32 – Limitation Act, 1969, Article 136 – Execution of Decree – Limitation – Decree was not simpliciter a decree for mandatory injunction, rather the same was for composite relief of declaration as well as for mandatory injunction case of the plaintiff was covered under Article 136 of the Limitation Act – Executing Court is directed to proceed with execution in accordance with law.”

12. Reference may also be made to judgment of Allahabad High Court in **Som Nath v. Vith ADDL. District Judge, Bareilly (Allahabad) : Law Finder Doc ID # 255216**; wherein it is held as under: -

“Limitation Act, 1963, Article 135 - Execution - Decree for mandatory injunction with prayer for removal of construction existing in the passage with additional prayer to remove the illegally constructed wall 'XE' and constructions made thereon through Court Amin and possession be delivered - Not a pure and simple relief of mandatory injunction - Limitation of 3 years does not apply - Decree for possession may be enforced by filing execution application within 12 years Decree for permanent prohibitory injunction has to be granted - Decree cannot be enjoyed unless constructions in the passage apart from wall 'XE' are removed - For execution of such decree no time limit is prescribed as per Article 136 of Schedule.”

13. The Orissa High Court in **Gyanendra Pradhan v. Kanak Dei (Orissa) : Law Finder Doc ID # 174817**; has also held as under: -



“Limitation Act, 1963, Articles 135 and 136 - Applicability of - Execution Case - Decree directing defendants to hand over the possession of suit premises within one month to the plaintiffs and further restraining him from entering into the premises - It is Article 136 and not Article 135 which is applicable for enforcement of a direction for permanent injunction.”

14. Reference may also be made to another judgment of this Court in **Makhan Singh v. Harbans Lal, (P&H) : Law Finder Doc ID # 812812;** wherein it is held as under: -

“B. Civil Procedure Code, 1908 Section 151 Execution of Ex-Parte Judgment & Decree – When petitions filed to set aside Ex-Parte Judgment & Decree are pending, the Courts should be slow in executing the ex-parte decrees.

15. The learned Executing Court has considered in extenso the relevant case laws and all the material on record and has thereafter dismissed the objections. The impugned order is a well-reasoned comprehensive order, relevant extract of which is reproduced hereinbelow:-

“7. In the present case, the decree under execution directed delivery of possession of the suit premises to be given by the defendants to the plaintiff within two months and permanently restrained the defendants from entering upon the suit premises, in other words, the claim of the plaintiff for recovery of possession and permanent injunction as granted. There was no specific direction in the decree to be carried out by the defendants which can be said to be in the nature of a mandatory injunction. As such, it cannot be said that Article 135 is attracted



*to the decree under execution. If Article 135 does not apply to the case then Article 136, applies and the said provision prescribes twelve years for execution of any decree or order of civil court and the proviso expressly provides that there will be no period of limitation for enforcement of a direction for permanent injunction. Hence the question of limitation does not arise. Reference in this regard may be made to **Gyanendra Pradhan Vs. Smt. Kanak Dei and others, 1985 AIR (Orissa) 254.**"*

16. It has accordingly been correctly held by the learned Court below that the Execution Petition was not barred by limitation. Accordingly, warrants of possession of the subject property of the decree under execution have been correctly issued in favour of the respondent/deGREE holder.

17. In view of the above, the present petition is **dismissed**.

18. Pending application(s) if any also stand(s) disposed of.

18.07.2025

Sunena

**(Nidhi Gupta)
Judge**

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No