



121 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.2158 of 2023
Date of decision : 07.01.2025

SATISH KUMAR ALIAS BHOLAPetitioner

Versus

LAXMI NARAINRespondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Lajpat Rai Sharma, Advocate for the petitioner.

Mr. Alok Mittal, Advocate with
Mr. Sylvester, Advocate for the respondent.

PANKAJ JAIN, J. (ORAL)

Instant revision petition is directed against order dated 19.12.2022 passed by Civil Judge (Senior Division), Bhiwani whereby application filed by the plaintiff under Section 151 of the Code of Civil Procedure, 1908 seeking direction to the defendant to furnish security in order to satisfy the contemplated decree which may be passed in the civil suit, stands allowed.

2. For convenience, the parties hereinafter referred to by their original position in the suit i.e. the petitioner as the defendant and the respondent as the plaintiff.

3. Petitioner/defendant is facing recovery suit filed at the behest of the respondent/plaintiff seeking recovery of amount of Rs.23,56,318/-.
Along with the plaint, an application under Order 38 Rule 5 CPC seeking



attachment of the property of the defendant was filed, which was dismissed vide order dated 15.12.2020. Subsequent, instant application was filed under Section 151 CPC seeking enforcement of the directions issued by Supreme Court in the case of '**Rahul Singh Shah vs. Jitender Kumar Gandhi and others**', **Civil Appeal Reports 2021 (Civil) 597** wherein Supreme Court issued certain directions w.r.t. mode and manner in which the recovery suits and the execution proceedings need to be dealt by the Courts below.

4. Relying upon one of the directions as contemplated therein, instant application stands allowed. Petitioner/defendant has been directed to furnish security to the extent of Rs.23,56,318/-.

5. Counsel for the petitioner/defendant while assailing the impugned order submits that once the application filed under Order 38 Rule 5 CPC already stands declined, there was no reason for the Trial Court to entertain subsequent application for the same relief.

6. Per contra, counsel for the respondent/plaintiff submits that since the directions issued by Supreme Court partake character of law, the Trial Court has rightly allowed the application filed by the plaintiff and directed defendant to furnish the security. He is not in position to deny the fact that earlier application filed by the plaintiff under Order 38 Rule 5 CPC stands declined.

7. I have heard counsel for the parties and have gone through records of the case.



8. Observation made by Supreme Court in *Rahul Singh Shah's* case (supra) are guidelines. They are not to be followed blindly but need to be tested and applied in the facts and circumstances of each case. In the present case, once application under Order 38 Rule 5 CPC stood declined, there was no reason to entertain the subsequent application and that too when defendant has specifically mentioned in the reply to the earlier as well as present application that he does not intend to dispose of his property.
9. With the consent of both parties, the instant revision petition is disposed off with the direction to the Trial Court to decide the Civil Suit bearing CIS No.CS/554/2020 titled as 'Laxmi Narain vs. Satish Kumar' expeditiously preferably within the year of 2025.
10. Needless to say, the petitioner/defendant would remain bound by his stand taken in the reply to the application filed by the plaintiff under Order 38 Rule 5 CPC and the subsequent application filed under Section 151 CPC.
11. Ordered accordingly.

January 07, 2025

(Pankaj Jain)
Judge

Dpr

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