



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 22.09.2025

1. CR-2721-2023 (O&M)

Beero Devi

...Petitioner(s)

Vs.

Nirmala and another

...Respondent(s)

AND

2. CR-2126-2023 (O&M)

Beero Devi

...Petitioner(s)

Vs.

Nirmala and another

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Kshitij Sharma, Advocate for the petitioner
in both the cases.

Mr. Alok Mittal, Advocate for the respondents
in both the cases.

NIDHI GUPTA, J.

CR-2721-2023 (O&M)

Present Civil Revision Petition has been filed by the defendant/judgment debtor against the order dated 08.02.2023 (Annexure P-1); whereby application filed by the petitioner before the learned District Judge, Bhiwani permitting the petitioner to pursue Civil Appeal as indigent person, had been dismissed.

CR-2126-2023 (O&M)



Present Civil Revision Petition has been filed by the defendant/judgment debtor against order dated 20.12.2022 (Annexure P-1); whereby although application of the petitioner for setting aside exparte proceedings against her, has been set aside by the learned Additional Civil Judge (Senior Division), Bhiwani; however, petitioner has been permitted to appear in Execution Petition from that stage only; **and** against order dated 04.02.2023 (Annexure P-1-A); whereby the Civil Miscellaneous Appeal filed by the petitioner against the aforesaid order dated 20.12.2022, has been dismissed by Addl. District Judge, Bhiwani.

2. Both the above said Civil Revision Petitions are being disposed of by this common order as both emanate from the same judgment and decree dated 11.5.2022 and are between the same parties in respect of the same suit property. However, each matter is individually considered on merits. For the sake of convenience, facts are being drawn from CR-2721-2023 titled as *“Beero Devi vs. Nirmala and another.”*

3. Brief facts of the case in chronological order are as follows: -

01.10.2016: The plaintiffs/respondents had filed a suit dated 01.10.2016 for possession by way of specific performance and permanent injunction.

11.05.2022: Suit of the plaintiffs was decreed with costs vide judgment and decree dated 11.05.2022 (Annexure P-2) with the finding that the plaintiffs had succeeded in proving Agreement, as well as their readiness and willingness. Accordingly, a direction was issued to the plaintiffs to



deposit balance sale consideration before the Court; and further direction to the defendant to execute Sale Deed in favour of the plaintiffs within 1 month from date of receiving/deposit of balance sale consideration.

23.05.2022: Against the said judgment and decree dated 11.05.2022 (Annexure P-2), petitioner/defendant had filed Civil Appeal dated 23.05.2022; alongwith the application (Annexure P3) under Order 22 Rule 2 seeking leave of Court to file the Civil Appeal being indigent person.

25.07.2022: On 25.07.2022, plaintiffs duly deposited remaining amount of sale consideration as directed vide judgment dated 11.05.2022.

28.07.2022: Thereafter, on dated 28.07.2022, the decree holder filed Execution Petition as evident from the zimni order Annexure P-4.

05.08.2022: In the said Execution Petition, the petitioner was proceeded against ex parte vide order dated 05.08.2022 (Annexure P-4-B). The said order reads as follows: -

“Notice issued to JD received back with the report of refusal. Case has been called several times since morning but no one has appeared on behalf of JD. It is already 03:45 PM. Further wait is not justified. Hence, JD is hereby proceeded against ex parte.

Now, to come up on 31.08.2022 for arguments.”

03.10.2022: Vide order dated 03.10.2022 (Annexure P-4-C), Local Commissioner was appointed for registration of Sale Deed in favour of Decree holder.



18.11.2022: On 18.11.2022, order of warrants of possession was issued against the petitioner.

12.12.2022: Thereafter, petitioner filed application dated 12.12.2022 (Annexure P-5) for setting aside the exparte order dated 5.8.2022, claiming therein that she had discovered about the Execution Petition only on 09.12.2022.

16.12.2022: Respondents had filed reply dated 16.12.2022 (Annexure P-5/A) to the above said application.

20.12.2022: Vide the impugned order dated 20.12.2022 (Annexure P-1-A), the application of the petitioner was allowed to the effect that “..... *application in hand stands allowed to the effect that ex parte order dated 05.08.2022 against JD is hereby set aside but she is allowed to appear in present petition from this stage only. Nothing stated hereinabove shall be construed as my opinion on merits of case. Let warrant of possession of suit land be issued for 17.01.2023, the date already fixed.*”

04.02.2023: Against order dated 20.12.2022 (Annexure P-1-A), petitioner had preferred Civil Miscellaneous Appeal No.7 dated 20.01.2023, which was dismissed vide impugned order dated 04.02.2023 (Annexure P-1-B).

08.02.2023: Vide impugned order dated 08.02.2023 (Annexure P-1), application of the petitioner for pursuing the Appeal as an indigent person, was also dismissed.

4. Hence, present Civil Revision Petitions.



5. It is *inter alia* submitted by learned counsel for the petitioner that in dismissing the application of the petitioner to sue as an indigent person, the learned Courts below have failed to appreciate that their whole approach while passing the impugned order dated 08.02.2023 is illegal and perverse. The learned Courts below have failed to appreciate the facts and circumstances of the case in proper perspective. It is submitted that it was the clear case of the petitioner/revisionist that she does not own and possess any means to pay Court fee. She does not own any movable or immovable property of her own, except the clothes and wearing and she has no property, and nor any properties is available to raise funds to defray Court fees expenses. The petitioner does labour work and has no source of income. It submitted that accordingly the Courts below were in error in dismissing the application of the petitioner to pursue the Appeal as indigent person.

6. As regards the other impugned orders dated 20.12.2022 (Annexure P-1-A) and 04.02.2023 (Annexure P-1-B), learned counsel for the petitioner submits that it is established position in law that judgment debtor must be given an opportunity. However, vide the order dated 20.12.2022 (Annexure P-1-A), opportunity was granted from this stage only thereby rendering the said order to be otiose; while at the same time, issuing warrants of possession. As such, even though favourable order was given, the same has been rendered ineffective and pointless because thereby the petitioner was only permitted to join future proceedings and warrants of possession was also issued. No opportunity



to file objections was given. Thus, even though the ex parte order dated 05.08.2022 (Annexure P-4-B) was set aside, the same did not yield any result. It is accordingly prayed that the present Civil Revision Petitions be allowed; and the impugned orders be set aside.

7. *Per contra*, learned counsel for the respondents opposes submissions of the petitioner and submits that the facts speak for themselves. The petitioner is deliberately trying to obfuscate the due process of law and create hurdles in the execution of the decree. It is further pointed out that there is no merit to the application of the petitioner to pursue the Appeal as an indigent person as the petitioner was duly paid earnest money of Rs.30 lakhs. Moreover, petitioner is owner of several properties and businesses. It is contended that accordingly, the impugned orders suffer from no error. He prays for dismissal of the present Civil Revision Petitions.

8. No other argument is raised on behalf of the parties.

9. I have heard Id. counsel and perused the case files in detail; and I find no error in the orders passed by learned Courts below.

10. In respect of the impugned orders dated 20.12.2022 (Annexure P-1-A) and 04.02.2023 (Annexure P-1-B), it has been clearly recorded by the Executing Court in the order dated 05.08.2022 (Annexure P-4-B) that notice issued to the petitioner was received back with the report of refusal; which is valid service. The findings of the learned Additional District Judge, Bhiwani as recorded in order dated



04.02.2023 (Annexure P-1-B) in paras 7, 8 and 9 are relevant, and are reproduced hereunder: -

“7. File perused. Plaintiff (sic Defendant) Beero Devi had earlier filed a suit for specific performance regarding the property measuring 202.46 square yards, regarding which the agreement to sell dated 29.11.2015 was executed. By the judgment and decree dated 11.5.2022, the said suit was decreed to the effect that plaintiff is entitled for specific performance of the agreement to sell dated 29.11.2015 on payment of balance sale consideration and other formal relief. Qua the execution of the said judgment and decree, execution filed on 28.7.2022. The execution has been filed within the period of one year, but still learned Executing Court preferred to issue notice of the same, which stood served on the JD for the date fixed of 5.8.2022. The zimni order of this date shows that notice was received back with the report of refusal. From the original file the said summons of the execution petition for the date fixed of 5.8.2022 perused, in which, there is affidavit of process server, and a detailed report given that JD Beero Devi was present in the house but she did not come forward to receive the summons and the notices were pasted on the wall of the house. Then after, the sale deed was got executed and now when the stage of was of issuance of warrants of possession, the setting aside exparte order dated 5.8.2022 was moved by the JD and decided by the impugned order.

8. On the facts met, the learned Trial Court has taken a liberal approach in allow of the application of the JD qua the exparte proceedings dated 5.8.2022, however, by the day when the setting aside exparte order application was moved, Sufficient water has been flown down in the execution



petition with execution of the sale deed. Learned Trial Court has allowed the ex parte proceedings by allow of JD in the proceedings from now onwards to this stage. Learned counsel for JD is unable to show any relevant case law of any Act, where it can be found that sale deed executed in the execution petition, can be set aside by the Executing Court, if the ex parte orders of JD passed earlier are vacated. In the impugned order, nothing has been said if JD has been deprived of filing any objections. From perusal of the execution file, it appears that no objections had been filed by the JD, till date or even before when he preferred his application of setting aside of the ex parte order. One such interpretation cannot automatically be read as suggested by the JD.

9. In these backgrounds, there appears to be no illegality found in the impugned order as could be proved by the JD. Resultantly, the present civil miscellaneous Appeal is devoid of merits and hence stands dismissed.” (Emphasis added)

11. Ld. Counsel for the petitioner is unable to make out any error in the above findings. The above findings would also lend weightage to the argument of counsel for the respondents that petitioner was deliberately trying to delay the matter and execution of the decree. Thus, the orders dated 20.12.2022 (Annexure P-1-A) and 04.02.2023 (Annexure P-1-B), suffer from no error.

12. As regards application of the petitioner to sue as an indigent person, I find no error in the order dated 8.2.2023 as well; as, the petitioner has failed to comply with the requirements under Order 33 Rule 2 CPC, which reads as follows: -



“Every application for permission to sue as an indigent person shall contain the particulars required in regard to plaints in suits; as schedule of any movable or immovable property belonging to the applicant, with the estimated value thereof, shall be annexed thereto; and it shall be signed and verified in the manner prescribed for the signing and verification of pleadings”.

13. However, in the present case, the application of the petitioner to sue as an indigent person, was not accompanied by schedule of movable and immovable properties as required under the above said provision. Learned Additional District Judge, Bhiwani in his order dated 08.02.2023 (Annexure P-1) has further categorically recorded that the petitioner *“has received a sum of ₹30 lakhs as earnest money from respondent through cheques and same has already credited in her account. No details of that bank account has furnished by applicant. Photocopy of RC reveals that a Alto car is in the name of her husband. Photocopy of electricity bill account No. 812618000 of ₹5400/- for the month of September 2022 and photocopy of electricity bill account No.2317380000 of ₹1335/-, reveal that two electricity connections are in the name of her husband which shows that financial status of the family of applicant is good.”* Clearly, therefore, the petitioner has withheld material information from the Courts below; and has not come clean before the Courts.

14. Learned Additional District Judge, Bhiwani, while relying upon judgment passed by Andhra Pradesh High Court in **Sanjeevayya Nagar Co-**



operative House Building Society vs. S. Malla Reddy alias Parvathalu and others, 2006(1) CivCC 8, Law Finder Doc Id # 137312, has dismissed application of the petitioner to sue the Appeal as an indigent person with the following reasoning in para 9 of order dated 8.2.2023: –

“9. So, keeping in view entire facts and circumstances including financial status of the applicant, her family, non-presenting of application with conformity of provision contained Under Order 33 rule 2 of CPC i.e.. non-disclosing as schedule of movable or immovable property belonging to the applicant, with the estimated value thereof and non-presence of applicant at the time of filing of application as contained provision under order 33 rule 1(a) CPC, application for allowing applicant to declare her as an indigent person is dismissed.”

15. Moreover, it cannot be lost sight of that the petitioner has even failed to remain present before the Court. Even no application for exemption was filed. Hence, I find no error even in the impugned order dated 8.2.2023.

16. It has been submitted by learned counsel for the petitioner that right of the petitioner to file Appeal must be recognized. There can be no dispute with regard to right of the petitioner to file Appeal against the judgment and decree dated 11.05.2022 (Annexure P-2). However, right of the petitioner to sue the Appeal as an indigent person, is dependant upon the attendant facts and circumstances of the case, which, as demonstrated above, are not substantiated from the facts on record. Not only has the petitioner clearly failed to comply with the provisions of



Order 33 Rule 2 CPC, but she has also withheld relevant information from the Courts.

17. In view of the above, no ground is made out to interfere in impugned orders. Both Civil Revision Petitions stand **dismissed**.

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

22.09.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

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