



129

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

CR-3128-2025

Date of decision: 20.05.2025

Gurnam Singh

...Petitioner

Versus

Shamsher Singh

...Respondent

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

Present: Mr. S.S. Momi, Advocate for the petitioner.

\*\*\*\*

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

1. This is a revision petition filed under Article 227 of the Constitution of India for setting aside the order dated 18.01.2025 (Annexure P-1) passed by the Executing Court vide which warrants of possession of the plot in question has been issued. Challenge is also to the order dated 29.04.2025 (Annexure P-2) vide which the Executing Court had dismissed the application for recalling of order dated 18.01.2025 (Annexure P-1).

2. Learned counsel for the petitioner has submitted that in the present case, the execution petition was filed in the year 2017 and against the judgment dated 23.11.2016 granting relief of possession to the plaintiff, the petitioner had filed an appeal, which was pending. It is submitted that on 18.01.2025, since no further order was received from the First Appellate Court, thus, the case was adjourned to 03.05.2025 and thereafter, on 18.01.2025, an application was moved by the respondent for issuance of warrants of possession and on the said application, order dated 18.01.2025 issuing warrants of possession was passed which is in violation of Order 21



Rule 22 CPC as well as Order 21 Rule 26 CPC.

3. On a pointed query raised by this Court, learned counsel for the petitioner has fairly submitted that against the judgment dated 09.01.2025, the petitioner had filed a Regular Second Appeal in the ordinary process and since it was filed in the ordinary course, the same was listed for the first time on 16.05.2025 and on the said date, the matter was adjourned to 09.12.2025. It is submitted that the impugned order dated 18.01.2025 as well as order dated 29.04.2025, vide which recalling application had also been dismissed, are illegal and both the said orders deserve to be set aside.

4. This Court has heard learned counsel for the petitioner and has perused the paper book and is of the opinion that the impugned orders are in accordance with law and deserve to be upheld and the present revision petition deserves to be dismissed for the reasons mentioned hereinafter.

5. It is not in dispute that the respondent-Shamsher Singh had filed a suit for possession in the year 2012 and the present petitioner was defendant No.1 in the said suit and vide judgment and decree dated 23.11.2016, the following relief was granted to the respondent:-

*“22. As a sequel to my foregoing discussion especially on issue No.1, the suit of the plaintiff succeeds and the same is hereby decreed with costs to the effect that the plaintiff is entitled to possession of the plot in dispute situated at Vashisht Colony Tehsil Thanesar, District Kurukshetra from the defendant no. 1. Accordingly the defendant no. 1 is hereby directed to hand over the vacant and peaceful possession of the plot in question to the plaintiff within a period of 60 days from today, failing which plaintiff shall be at liberty to seek the execution of this judgment in accordance with law. Decree sheet be drawn up accordingly. File after due compliance be consigned to the*



*Record Room.*

*Pronounced in open Court.*

*(Sanjay)*

*Date:23.11.2016*

*Civil Judge (Junior Division)*

*Kurukshetra”*

6. The present petitioner was accordingly directed to handover the possession of the property in question within a period of 60 days from the date of the judgment. An appeal against the said judgment filed by the present petitioner was dismissed on 09.01.2025 (Annexure P-9). After passing of the said judgment dated 09.01.2025, since there was no stay in favour of the present petitioner, thus, an application dated 18.01.2025 was filed by the respondent-plaintiff for issuance of warrants of possession.

7. On 18.01.2025, in the presence of the counsel for the present petitioner, file was taken up and a copy of the judgment dated 09.01.2025 passed by the First Appellate Court, vide which appeal filed by the present petitioner had been dismissed, was taken on record. A speaking order was passed by the Executing Court observing that a perusal of judgment dated 23.11.2016 showed that the suit of the plaintiff was decreed with costs and the plaintiff was held entitled to possession of the plot in dispute and further present petitioner was directed to handover the vacant possession of the plot in question and since the appeal against the same was also dismissed, the warrants of possession of the plot in dispute was issued for 01.02.2025. The said order dated 18.01.2025 is reproduced hereinbelow:-

*“Present: Sh. Rajesh Sharma, counsel for the DH.*

*Shri Amit Gupta, counsel for JD.*

*File taken up again. Copy of judgment dated 09.01.2025  
passed by learned Appellate Court placed on record by DH*



*whereby the appeal filed by defendant has been dismissed and judgment dated 23.11.2016 passed by learned Trial Court has been upheld. Further, an application for issuing the warrant of possession and order for breaking the locks in the suit property moved by DH through counsel.*

*Perusal of judgment dated 23.11.2016 reflects that the suit of the plaintiff was decreed with cost to the effect that plaintiff is entitled to possession of the plot in dispute situated at Vashisht Colony, Tehsil Thanesar, District Kurukshetra from the defendant No.1. Further, defendant No.1 was directed to hand over the vacant and peaceful possession of the plot in question to the plaintiff. Thus where the appeal against judgment and decree dated 23.11.2016 has been dismissed by the learned Appellate Court, warrant of possession of the plot in dispute be issued for 01.02.2025 on filing of copy of judgment etc. The bailif is directed to break open the lock of the gate of plot in question and hand over the vacant possession of the plot in dispute to the DH.*

*(Dr. Mohini)*

*Addl. Civil Judge (Sr. Division),*

*Kurukshetra. UID No.HR0356*

*Date of Order:18.01.2025”*

8. The petitioner had filed an application for recalling of the said order dated 18.01.2025, which was dismissed by the Executing Court vide order dated 29.04.2025 after observing that the judgment of the trial Court dated 23.11.2016 had been upheld vide judgment dated 09.01.2025. It was further observed that there was no stay on the execution of the judgment dated 18.01.2025 and 09.01.2025 and that the order dated 18.01.2025 had already been given effect to as possession of the suit property had been delivered to the decree holder.



9. From a perusal of the record, it is apparent that a copy of the judgment dated 09.01.2025 passed by the First Appellate Court was placed on record vide order dated 18.01.2025. The appropriate remedy for the petitioner was to challenge the judgment of both the Courts by filing a Regular Second Appeal along with an application for stay and an application for urgent hearing. However, surprisingly, the petitioner has chosen to file the Regular Second Appeal in the ordinary course without any urgent form, as has been admitted by the learned counsel for the petitioner before this Court. It is a matter of common practice that Regular Second Appeal filed in the ordinary course does not come up for hearing immediately and comes in the normal course after the Registry takes into consideration the total number of ordinary Regular Second Appeals filed. On the other hand, the RSA filed along with urgent form are taken up for hearing within three days, if complete in all respects. The Regular Second Appeals which are normally filed in the ordinary process, are invariably, those appeals in which there is no prayer for stay or when there is no urgency in the matter. It has further been brought to the notice of this Court by the learned counsel for the petitioner that the said Regular Second Appeal was for the first time listed on 16.05.2025 and there is no interim order in favour of the appellant till date. From the above, it is apparent that the only endeavour of the petitioner is to somehow get the execution of the judgment and decree dated 23.11.2016 and 09.01.2025 delayed by moving frivolous application before the Executing Court, instead of arguing the Regular Second Appeal. The Executing Court has rightly come to the conclusion that once the judgment of the trial Court had been upheld by the First Appellate Court vide judgment dated 09.01.2025 and there was no



stay operating in favour of the present petitioner, then it was necessary for the Executing Court to execute the judgment and decree dated 23.11.2016 which has been upheld by the judgment and decree dated 09.01.2025.

10. Argument raised by learned counsel for the petitioner to the effect that no notice was issued to the Judgment Debtor and thus, there was non-compliance of Order 21 Rule 22 CPC is completely misconceived, inasmuch as, order dated 18.01.2025 was passed in the presence of counsel for the petitioner, as is apparent from the bare reading of the said order dated 18.01.2025. Moreover, in the present case, the judgment of the First Appellate Court had been passed on 09.01.2025 and the application for issuance of warrants of possession dated 18.01.2025 had been filed within a period of two years from the date of said judgment. In the present case, since counsel for the present petitioner had appeared on 18.01.2025 thus, there was no occasion for the Executing Court to have issued notice to the petitioner. At any rate, the warrants of possession have been issued after taking into consideration all the facts and the order passed on 18.01.2025 is a speaking order.

11. With respect to argument raised by learned counsel for the petitioner of there being violation of provisions of Order 21 Rule 26, it would be relevant to note that the said provision is an enabling provision empowering the Executing Court to grant stay of execution for a short period (reasonable period) upon sufficient cause being shown. In the present case, there is no such sufficient cause and in fact, as has been pointed hereinabove, even the Regular Second Appeal has been filed by the petitioner in the ordinary course and thus, the Executing Court has rightly passed the impugned order.

12. The Hon'ble Supreme Court in the case of *"Shalini Shyam*



**Shetty and another Vs. Rajendra Shankar Patil**”, reported as **(2010) 8 Supreme Court Cases 329**, had observed that the High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of court or tribunal subordinate to it. It was also observed in the said judgment that a statutory amendment with respect to Section 115 of the Civil Procedure Code does not and cannot cut down the ambit of High Court’s power under Article 227 but at the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court’s jurisdiction of superintendence under Article 227. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court. It was also observed that the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline.

13. Keeping in view the abovesaid facts and circumstances, this Court is of the opinion that the impugned orders do not call for any interference by this Court while exercising its powers under Article 227 of the Constitution of India and accordingly, the impugned orders are upheld and the present revision petition being meritless, deserves to be dismissed and is accordingly, dismissed.

**20.05.2025**

*Pawan*

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

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