



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

**CR No.6835 of 2019 (O&M)  
Date of Decision:-20.05.2026**

Akbar Ali and another

.....Petitioners.

Versus

Noor Mohd.

.....Respondent.

**CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

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Present:- Mr. Mandeep Kumar Dhot, Advocate  
for the petitioners.

Mr. Jai Bhagwan, Advocate  
for the respondent.

**VIKRAM AGGARWAL, J. (ORAL)**

The instant revision petition, preferred under Article 227 of the Constitution of India, assails order dated 27.02.2019 (Annexure P-2) passed by the Court of Civil Judge (Junior Division), Malerkotla, vide which the application filed by the petitioners-JDs under Order XXI Rule 32 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC') seeking dismissal of the execution petition was dismissed. Challenge has also been laid to order dated 06.09.2019 (Annexure P-3) vide which order of removal of construction against the petitioners-JDs was passed by the said Court.

2. The respondent-DH instituted a suit for mandatory and permanent injunction. The said suit was decreed by the Court of Civil

Judge (Junior Division), Malerkotla, vide judgment and decree dated 03.02.2009 (Annexure P-1). The operative part of the judgment reads as under:-

***“17. On the basis of above discussion and in view of my findings on issues No.1 to 4, the suit of the plaintiff succeeds, hence, it is decreed with costs. A decree of mandatory injunction is ordered to be passed in favour of plaintiff and against the defendants and they (defendants) are directed to remove the wall AD, depicted in site plan Ex.P-1 and other corresponding construction over the area ALMD to the extent of 11.¾ sq. yds., with in one month, failing which the plaintiff would be at liberty to remove the wall and other construction from the said area through the agency of the court. The defendants are also restrained from raising any further construction over the above area. Decree be drawn accordingly.”***

3. It transpires that an execution petition was instituted by the respondent-DH. An application under Order XXI Rule 32 CPC was instituted by the petitioners-JDs seeking dismissal of the execution petition on the ground of limitation. The said application was, however, dismissed vide impugned order dated 27.02.2019 (Annexure P-2) after which, vide order dated 06.09.2019 (Annexure P-3), a direction was issued to the petitioners-JDs to remove the wall.

4. I have heard learned counsel for the parties.

5. Learned counsel for the petitioners-JDs has strenuously urged that the suit was decreed on 03.02.2009 whereas the execution petition was filed on 25.08.2012 which was beyond the period of limitation of three

years. It has been submitted that under the circumstances, the execution petition should have been dismissed. Learned counsel further submits that since in the appeal instituted by the petitioners-JDs against the said decision, there was no stay of execution and there was only a *status quo* as regards possession for one date, limitation would not stop running and, therefore, the execution petition, filed on 25.08.2012, would be barred by limitation. In support of his contentions, learned counsel has placed reliance upon the judgments passed by the Hon'ble Apex Court in ***Babu Singh (D) through LRs and another Versus Jalandhar Improvement Trust and another, Petition for Special Leave to Appeal (C) No.4284 of 2023, decided on 17.02.2026*** and ***Ram Bachan Rai and others Versus Ram Udar Rai and others, 2006 A.I.R. (SC) 2248***, the judgments of a co-ordinate Bench of this Court in ***Imperial Hotel and Restaurant Pvt. Ltd. Versus Karnail Singh and others, 2014(4) Law Herald 3184*** and ***Diwan Singh Versus Om Parkash, 1998(2) P.L.R. 694*** and the judgment of the Madras High Court in ***D. Balakumar @ Selvakumar Versus Vedachalam, The Commissioner, Ambattur Municipality, C.R.P. No.1046 of 2001, decided on 12.03.2004.***

6. Per contra, learned counsel for the respondent-DH has submitted that there is no illegality in the impugned order. It has been argued that against the judgment and decree dated 03.02.2009, an appeal had been preferred by the petitioners-JDs and in the said appeal, vide order dated 24.04.2009, parties had been directed to maintain *status quo* as regards the wall in question. Learned counsel submits that the appeal was

finally dismissed on 21.11.2012 after which the execution petition was filed on 25.08.2012 within the period of limitation. Learned counsel submits that though *status quo* had been granted on one date, it was never vacated even if it was not formally extended. Learned counsel submits that even otherwise, the limitation would start running from the date of the decision of the appeal and not from the date of decision of the suit. In support of his contentions, learned counsel has placed reliance upon the judgments of Patna High Court in ***Deokinandan Poddar and others Versus Ramesh Kumar Goenka and others, 1997 AIR (Patna) 153*** and ***Jokhan Rai Versus Baikunth Rai, 1987 AIR (Patna) 133*** and the judgment of a co-ordinate Bench of this Court in ***State of Punjab Versus Joga Singh, 1987 (5) SLR 386***.

7. I have considered the submissions made by learned counsel for the parties.

8. Concededly, the suit was decreed vide judgment and decree dated 03.02.2009. The petitioners-JDs preferred an appeal against the said judgment and decree. Vide order dated 24.04.2009 (Annexure P-4), the Court of Additional District Judge, Sangrur, directed the parties to maintain *status quo* as regards the wall in question. The said appeal is stated to have been dismissed on 21.11.2012.

9. Article 135 of the Limitation Act, 1963, provides for a limitation of three years for execution of a decree granting mandatory injunction. The said period of three years, as per the Limitation Act, 1963, begins to run from the date of the decree or where a date is fixed for

performance, such date.

10. Reverting to the case, since the petitioners-JDs had themselves preferred an appeal against the judgment and decree dated 03.02.2009 and a stay order had been passed by the Appellate Court directing the parties to maintain *status quo* as regards the wall in question, there was no occasion for the respondent-DH to have filed an execution petition during the said period. No doubt, the stay was not extended subsequently, but at the same time, it was not vacated also. The appeal was dismissed on 21.11.2012 and the execution petition was filed on 25.08.2012. If the facts of the present case are considered, it cannot, under any circumstance, be held that the execution petition was barred by limitation and, therefore, there is no illegality in the order passed by the Executing Court dismissing the application under Order XXI Rule 32 CPC.

11. I have gone through the judgments relied upon by learned counsel for the petitioners-JDs. In the case of ***Babu Singh (D) through LRs and another Versus Jalandhar Improvement Trust and another (supra)***, the trial Court had dismissed the suit. The first appeal was allowed on 06.01.2005 and mandatory injunction was granted. An execution application was filed on 12.08.2010. The Executing Court dismissed the application as being barred by limitation. It was argued before the Hon'ble Apex Court that dismissal of the execution petition was bad. However, the Hon'ble Apex Court upheld the order of dismissal of the execution petition stating that since the appellate Court had not specified any date for the performance, limitation would commence from the date of the decree.

Since the appellate Court had decided the appeal on 06.01.2005 and the execution petition had been filed on 12.08.2010 i.e. beyond the period of three years, it was held that the same was barred by limitation. There is absolutely no dispute with the said ratio because in that case, the execution petition had been filed after the period of limitation from the date of the decision of the appellate Court as well. The judgment of the Hon'ble Apex Court, in fact, does not apply to the facts of the present case. Similarly, the judgment of a co-ordinate Bench in the case of ***Imperial Hotel and Restaurant Pvt. Ltd. Versus Karnail Singh and others (supra)*** would also not apply. In the case of ***Diwan Singh Versus Om Parkash (supra)***, a co-ordinate Bench held that mere filing of an appeal against the judgment and decree in the absence of any stay granted by the appellate Court does not enlarge the period of limitation for execution of the decree. This is also not the case here because in the present case, a stay had duly been granted, as has been noticed in the preceding paragraphs. A similar view was taken by the Hon'ble Apex Court in the case of ***Ram Bachan Rai and others Versus Ram Udar Rai and others (supra)*** and the Madras High Court in the case of ***D. Balakumar @ Selvakumar Versus Vedachalam, The Commissioner, Ambattur Municipality (supra)***.

12. In the judgments relied upon by learned counsel for the respondent-DH, there is a full Bench judgment of the Patna High Court in the case of ***Jokhan Rai Versus Baikunth Rai (supra)*** which clearly lays down that the limitation would start from the date when the decree is finalized. The full Bench discussed the legislative history behind the

introduction of the Limitation Act, 1963 and then, took the following view:-

***“14. To sum up, the answer to the question posed at the outset is rendered in the term that the terminus a quo for computing the limitation of twelve years under Article 136 of the Act is the date of the appellate decree in the event of an appeal and not that of the original decree.”***

13. Be that as it may, reverting to the facts of the present case, since *status quo* as regards possession had been ordered and the appeal was finally dismissed on 21.11.2012 and the execution petition was filed on 25.08.2012, it could not have been said to be barred by limitation. Under the circumstances, no irregularity much less illegality can be found with the impugned orders. That being so, the instant revision petition is found to be devoid of merit and is accordingly dismissed.

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

**May 20, 2026**  
Yag Dutt

**(VIKRAM AGGARWAL)**  
**JUDGE**

*Whether speaking/reasoned:*      *Yes/No*  
*Whether Reportable:*              *Yes/No*