



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CR No.7424-2024

Date of Decision: 07.01.2025

Sudershan Sewa Trust Amritsar

...Petitioner

V/s

M/s Vishnu Processors Amritsar and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Umesh Aggarwal, Advocate, for the petitioner.

VIKRAM AGGARWAL, J (ORAL)

The present petition has been preferred under Article 227 of the Constitution of India for the issuance of directions to the executing Court i.e. the Court of the Additional Civil Judge (Sr. Divn.), Amritsar to decide the execution petition bearing EXE No.80 of 2021, titled as ***M/s Sudershan Sewa Trust V/s M/s Vishnu Processors.***

2. Learned counsel for the petitioner submits that upon an eviction petition preferred by the petitioner (Sudarshan Sewa Trust, Amritsar) under Section 13 of the East Punjab Urban Rent Restriction Act, 1949, eviction order was passed on 20.08.2014 (Annexure P-1). Aggrieved by the same, an appeal was preferred by the respondent on 06.10.2014. Vide order dated 27.07.2015 (Annexure P-2), the operation of the eviction order was stayed and *mesne* profits @ 4.5 per sq. ft. per month which came to Rs.2,13,145/- per month were fixed. A revision petition was preferred by the tenant against the said order and vide order dated 03.02.2016 (Annexure P-3), this Court modified the order dated 27.07.2015 and fixed the *mesne* profits @ 3.50 p. per sq. ft. per month. Since the tenants failed to comply with the said order, the revision petition was dismissed vide order dated 02.02.2017 (Annexure P-4).



Ultimately, the appeal preferred against the eviction order was dismissed-in-default vide order dated 20.09.2019 (Annexure P-5). A restoration application was filed against the said order, which was allowed but again, on account of non-appearance of respondent No.1, the appeal was dismissed-in-default on 15.12.2018 (Annexure P-6). He submits that yet another application for restoration has been preferred which is pending.

3. Learned counsel submits that execution petition was preferred by the petitioner in May 2021 and since then, the same is being adjourned without any valid reason. He submits that third party objections filed by an alleged subsequent purchaser are also pending and as on date, the outstanding amount of *mesne* profits is approximately Rs.2 crores, which the tenant is neither paying nor is the execution petition proceeding. He submits that under the circumstances, the rights and interests of the petitioner have been gravely impaired. Learned counsel submits that directions be issued to the concerned executing Court to decide the execution petition in a time bound manner. Learned counsel places reliance upon the directions issued by the Supreme Court of India in the case of ***Rahul S. Shah V/s Jinendra Kumar Gandhi and others, 2021(2) RCR (Civil) 854.***

4. I have considered the submissions made by learned counsel for the parties and find that the rights and interests of the petitioner have been gravely harmed on account of the execution petition not having been decided.

5. It needs to be noticed here that eviction order was passed as far back as on 20.08.2014 and *mesne* profits were fixed on 27.07.2015 which was modified by a coordinate Bench of this Court vide order dated 03.02.2016 but subsequently, since the order dated 03.02.2016 was not complied with by respondent No.1, the revision petition was dismissed. A perusal of the order dated 02.02.2017 (Annexure P-4), vide which the revision petition was



dismissed shows that as on that date, a sum of Rs.90 lakhs was payable on account of *mesne* profits and even if the benefit of the interim order dated 03.02.2016 passed in CR-741-2016 was to be considered, a sum of Rs.70 lakhs was outstanding. For, the order dated 03.02.2016, which was a conditional order, was not complied with, the revision petition was dismissed for non-compliance.

6. The appeal before the first appellate Court which had been preferred against the eviction order was also dismissed-in-default on 20.09.2017. However, upon an application for restoration having been filed, the same was restored, but again, the appeal was dismissed-in-default on 15.12.2018. This shows the conduct of respondent No.1 and it is manifestly clear that there is a deliberate and successful attempt to delay the proceedings.

7. The Court has been apprised that yet another application for restoration of the appeal has been filed which is pending and is listed for 04.03.2025.

8. A perusal of the interlocutory orders passed in the execution petition which have been placed on record as Annexure P-7 shows that there have been successful attempts by the judgment debtors and the objectors to delay the proceedings.

9. In the considered opinion of this Court, the executing Court should have been more sensitive. This Court is conscious of the fact that the Courts below are already burdened with a huge number of cases. However, at the same time, each Court would be duty bound to ensure that such burden does not give undue advantage to those on the wrong side of law. Specific directions had been passed by the Supreme Court of India in the case of **Rahul S. Shah** (supra) that the execution petitions are to be decided within a period of six months;



“42. All Courts dealing with suits and execution proceedings shall mandatorily follow the below-mentioned directions:

- 1. In suits relating to delivery of possession, the court must examine the parties to the suit under Order 10 in relation to third.***
- 2. party interest and further exercise the power under Order 11, Rule 14 asking parties to disclose and produce documents, upon oath, which are in possession of the parties including declaration pertaining to third party interest in such properties.***
- 3. In appropriate cases, where the possession is not in dispute and not a question of fact for adjudication before the Court, the Court may appoint Commissioner to assess the accurate description and status of the property.***
- 4. After examination of parties under Order 10 or production of documents under Order 11 or receipt of commission report, the Court must add all necessary or proper parties to the suit, so as to avoid multiplicity of proceedings and also make such joinder of cause of action in the same suit.***
- 5. Under Order 40, Rule 1 of CPC, a Court Receiver can be appointed to monitor the status of the property in question as custodia legis for proper adjudication of the matter.***
- 6. The Court must, before passing the decree, pertaining to***
- 7. delivery of possession of a property ensure that the decree is unambiguous so as to not only contain clear description of the property but also having regard to the status of the property.***
- 8. In a money suit, the Court must invariably resort to Order 21, Rule 11, ensuring immediate execution of decree for payment of money on oral application.***
- 9. In a suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The Court may further, at any stage, in appropriate cases during the pendency of suit, using powers under section 151 CPC, demand security to ensure satisfaction of any decree.***
- 10. The Court exercising jurisdiction under Section 47 or under Order 21 of CPC, must not issue notice on an application of third-party claiming rights in a mechanical manner. Further, the Court should refrain from entertaining any such application(s) that has already been considered by the Court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.***
- 11. The Court should allow taking of evidence during the execution***



proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.

12. The Court must in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala fide, resort to Sub-rule (2) of Rule 98 Order 21 as well as grant compensatory costs in accordance with Section 35A.

13. Under section 60 of CPC the term "..in name of the judgment-debtor or by another person in trust for him or on his behalf" should be read liberally to incorporate any other person from whom he may have the ability to derive share, profit or property.

14. The Executing Court must dispose of the Execution Proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.

15. The Executing Court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the concerned Police Station to provide police assistance to such officials who are working towards execution of the decree. Further, in case an offence against the public servant while discharging his duties is brought to the knowledge of the Court, the same must be dealt stringently in accordance with law.

16. The Judicial Academies must prepare manuals and ensure continuous training through appropriate mediums to the Court personnel/staff executing the warrants, carrying out attachment and sale and any other official duties for executing orders issued by the Executing Courts."

10. Keeping in view the facts as have been noticed above and the directions issued by the Supreme Court of India in the case of **Rahul S. Shah** (supra), the present revision petition is disposed of with a direction to the executing Court to decide the same expeditiously and not later than a period of three months from today.

(VIKRAM AGGARWAL)
JUDGE

January 07, 2025

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No