

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

129

CR-2-2025(O&M)

Date of order: 07.01.2025

Juhruddin & Others

.....Petitioner(s)

Vs.

Abdul Rajjak & Others

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Akshay Kumar Jindal, Advocate
for the petitioners.

Nidhi Gupta, J.

Challenge in the present petition is to the order dated 16.11.2024 (Annexure P10) whereby application filed by the petitioners/third party objectors for giving opportunity to press the objections/restoration of the objections, has been dismissed; **AND** setting aside the order dated 13.09.2023 (Annexure P11) vide which third party objections of the petitioners, has been dismissed as not pressed.

2. Learned counsel for the petitioners submits that the third party objections of the petitioners have been wrongly dismissed as not pressed vide order dated 13.09.2023 (Annexure P11), as, a perusal of the zimni orders (Annexure P7) reveals that the matter was adjourned on 05.08.2023 and 17.08.2023 in view of the prevailing law and order situation in the area as well as imposition of curfew/Section 144 Cr.P.C. because of which none had appeared before the Court on 13.9.2023. It is submitted that in view of this fact, even the application filed by the petitioners for



restoration of the said objections, has been wrongly dismissed vide the impugned order dated 16.11.2024 (Annexure P10).

3. Heard.

4. Brief facts of the case are that the respondent No.1/plaintiff had filed a suit for permanent injunction against the respondents No.2 to 4/defendants for restraining the respondents No.2 to 4 from interfering in the peaceful possession of respondent No.1 over the suit land. The respondents No.2 to 4 had contested the suit and filed a joint written statement stating that the defendants/respondents No.2 to 4 are actual owners in possession of suit land. Subsequently, the suit filed by respondent No.1 was decreed in favour of respondent No.1 vide judgment dated 11.06.2012 (Annexure P1) and respondents No.2 to 4 were restrained from interfering in the possession of the respondent No.1/plaintiff. Even appeal against judgment dated 11.06.2012 was dismissed by the learned Additional District Judge vide judgment dated 24.12.2012 (Annexure P2). Subsequently, execution petition (Annexure P3) was filed by the plaintiff/decreed holder/respondent No.1 in which the respondents No.2 to 4 were proceeded against ex parte vide order dated 06.05.2017 (Annexure P4). In the said execution petition, the petitioners had filed third party objections on 06.05.2017 (Annexure P5). The respondent No.1/decreed holder had duly filed reply to the objections dated 06.05.2017 (Annexure P6). However, as per the record, the petitioners failed to appear before the learned Executing Court. Accordingly, on



06.09.2023, following order was passed by learned Civil Judge (Junior Division), Ferozpur Jhirka:-

*“Today, case called several times since morning but counsel for the applicants/third party objectors has not come present before this court. In the interest of justice, now to come up on **13.09.2023** for awaiting presence of applicant/third party objectors and for further proceedings.”.*

5. On 13.09.2023, as the petitioners again failed to put in appearance, the third-party objections filed by them were dismissed as not pressed; and following order was passed: -

“Today the case was fixed for presence of applicants/third party objectors in view of order dated 06.09.2023. Case called several times, since morning but none has appeared on behalf of the applicants/third party objectors. It is already 03:45 P.M. Waited sufficiently. Further wait is not justified. As per facts and circumstances, it appears that the applicants/third party objectors are not desirous to proceed with the objections raised by them. As such, the third party objections raised by the applicants/ objectors namely Juhruddin, Altaf, Arshad and Saddam sons of Chand Khan are hereby dismissed being not pressed upon. Now to come up on 22.09.2023 for further proceedings.”

6. On 22.09.2023, keeping in mind the fact that the judgment and decree under execution was dated 11.6.2012, warrants of possession qua suit land were issued in favour of the decree holder/respondent No.1; and the following order was passed: -



“From the perusal of the case file it transpires that the present execution petition pertains the execution of the judgment and decree dated 11.06.2012. It has been stated that the JDs have dispossessed the decree holder from the suit land and request is made to issue the warrant of possession of suit land. Further the JDs have turned ex parte on dated 06.05.2017 and the objection raised by the applicants/third party objectors has also been dismissed being not pressed upon vide order dated 13.09.2023. As such, let warrant of possession qua the land in dispute be issued in favour of the DH for 13.10.2023.”

7. Subsequently, the petitioners filed an application seeking setting aside of the above said order dated 13.9.2023 whereby their third-party objections were dismissed as not pressed. The said application of the petitioners has been dismissed vide the impugned order dated 16.11.2024, observing that the learned court had given as many as 15 effective opportunities to the petitioners, yet the objections had not been pressed. It was further rightly observed by the learned court below that the decree under execution is dated as far back as 11.6.2012, yet the decree-holder is unable to enjoy the fruits thereof. The relevant part of order dated 16.11.2024, is as under: -

*“5. This Court has heard the rival contentions of the parties and perused the file carefully and is of the view that **this is not a fit case** to allow the present application. The court had given sufficient effective opportunities to the applicant to press his objections as a third party, precisely 15 opportunities, and still the objections were not pressed. Then, considering the fact that, the present execution petition (the judgment in which was*



passed on 11.06.2012) is pending since 2016 and that almost 8 years have elapsed but still the decree holder has not availed the fruits of decree, allowing the present application is not justified. This will amount to gross injustice for decree holder. Also, sufficient opportunities were given to the present applicant earlier but he did not press his objections and that now, when the same are dismissed being not pressed, he wants to press the same by moving this present application. This appears to this court nothing but a tool to delay the present execution petition.

*6. Also, it is pertinent to mention here the law laid down by the **Hon'ble Apex Court in Rahul S. Shah Vs. Jinendra Kumar Gandhi (2021 6 SCC 418)** wherein it was held that the executing Court must conclude the execution cases within a period of SIX MONTHS. Hence, it is the mandate of law that decree must be executed within six months and in the present case, allowing the present application will frustrate that mandate. When the applicant had 15 effective opportunities, he did not use them effectively and when the same were dismissed being not pressed, the present application was moved. Hence, even the principles of equity do not warrant the admission of present application as no one can take advantage of his own wrong and that delay defeats equity.*

7. Also, the proper remedy for order dated 13.09.2023 is to file revision before proper authority under section 115 of CPC and not the present application. Also, order dated 19.09.2023 do not fits into any category of orders mentioned in Rule 1 of Order XLIII CPC and thus it is not an appealable order but a revisable one.”



8. Ld. Counsel for the petitioners is unable to dispute or controvert the above said facts and findings. In view of the above, no ground is made out to interfere in the impugned order. Present petition accordingly stands **dismissed**.

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

07.01.2025

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No