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

CM-3909-CII-2025 in/and
CR-2691-2024 (O&M)
Date of decision: 04.03.2025

Krishan Singh

...Petitioner

Versus

Satyabir Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Sanchit Punia, Advocate for the petitioner.

VIKAS BAHL, J. (ORAL)

CM-3909-CII-2025

1. This is an application filed under Section 151 CPC for restoration of the case and recalling of order dated 29.10.2024.
2. For the reasons stated in the application which is duly supported by an affidavit, the present application is allowed and order dated 29.10.2024 is recalled and the main case is restored to its original number and is taken up on Board today itself for final disposal.

Main case

1. This is a revision petition filed under Article 227 of the Constitution of India for setting aside the order dated 05.10.2018 (Annexure P-12) vide which the sale stands confirmed as well as order dated 15.01.2024 passed by the Civil Judge (Junior Division), Hisar (Annexure P-18) vide which the objections filed by the petitioner were dismissed and also order dated 07.02.2024 (Annexure P-19) whereby the warrants of symbolic possession has been issued.



2. Learned counsel for the petitioner has submitted that in the present case, along with the civil suit, the proceedings under Section 138 of the Negotiable Instruments Act, 1881 were also initiated by respondent No.2-plaintiff with respect to dishonour of cheque and in the said criminal proceedings, the petitioner was convicted and the appeal filed against the same was pending and the matter was compromised vide order dated 07.06.2022. It is submitted that the suit filed by respondent No.2-plaintiff was decreed ex-parte and an application filed by the petitioner under Order 9 Rule 13 CPC for setting aside the said ex-parte decree was withdrawn in view of the compromise. It is submitted that in the said circumstances, the impugned order vide which the objections filed by the petitioner to the execution proceedings have been dismissed, deserve to be set aside and the said objections deserves to be allowed.

3. This Court has heard learned counsel for the petitioner and has perused the paper book and finds that impugned orders are in accordance with law and deserve to be upheld and the revision petition being meritless, deserves to be dismissed for the reasons stated hereinafter.

4. It is not in dispute that respondent No.2-plaintiff-Sandip had filed a suit for recovery of Rs.6,06,833/- against the present petitioner and the said suit was decreed vide judgment and decree dated 12.07.2016 (Annexure P-1) and the plaintiff was held entitled to recover a total amount of Rs.6,06,833/- along with future interest at the rate of 6% per annum from the date of the suit till its realisation. Although, the petitioner had filed an application under Order 9 Rule 13 CPC for setting aside the ex-parte decree but it is not disputed before this Court that the said application was never allowed and the judgment and decree dated 12.07.2016 had attained finality. The decretal amount would



apparently be a substantial amount as in addition to the principal amount, interest at the rate of 6% per annum had also been awarded vide said decree till its realisation. Learned counsel for the petitioner could not show that the entire amount of the decree has been satisfied. It is also not disputed that in the execution proceedings, the auction was ordered vide order dated 14.02.2017 (Annexure P-8) and the petitioner had filed objections which were dismissed vide detailed order dated 01.08.2018. Learned counsel for the petitioner has very fairly submitted that no further challenge was laid to the order dated 01.08.2018 wherein the objections filed by the petitioner in the execution proceedings were dismissed and thereafter, the execution proceedings were conducted and the sale was confirmed on 05.10.2018. After the sale was conducted, the auction purchaser stepped into the shoes of the plaintiff-decree holder and prayed for symbolic possession. The Civil Judge (Junior Division), Hisar vide order dated 15.01.2024, after taking into consideration the provision of Order 21 Rule 95 CPC as well as the fact that the auction purchaser had purchased the share of Judgment Debtor-Krishan Singh in the auction proceedings, held the auction purchaser to be entitled to symbolic possession of the premises and the objections filed by the petitioner and one other person were dismissed vide the said order dated 15.01.2024. The warrants of symbolic possession were issued on 07.02.2024 and the same were to be executed by 15.02.2024 and the Tehsildar was further directed to appear in person in case of non-compliance of the same. The orders passed subsequent to order dated 07.02.2024 have not been annexed with the present revision petition.

5. From the above said facts, it is apparent that the judgment and decree dated 12.07.2016 has attained finality and even the objections filed by the petitioner to the sale proceedings were dismissed vide order dated



01.08.2018 (Annexure P-11) which have also attained finality. Once, the objections filed by the petitioner-judgment debtor had been dismissed by the Executing Court and the same have attained finality, the petitioner had no locus standi to file any further objections. The auction purchaser, who had purchased the property in the auction which was conducted on the orders of the Executing Court, had stepped into the shoes of the decree holder and had every right to further seek possession, which in the present case would be symbolic possession, since the property is joint.

6. Order 21 Rule 95 CPC specifically provides that where the immovable property sold is in the occupancy of the judgment debtor or of some other person on his behalf or claiming under him, then the Court, on an application of the purchaser, can order delivery to be made by putting such purchaser or any person whom he may appoint to receive delivery on his behalf, in possession of the property and if need be, by removing any person who refuses to vacate the same. The auction purchaser having certificate of sale in his favour, thus, has been rightly held to be entitled to symbolic possession of the property in question. No argument could be raised by learned counsel for the petitioner to show that the orders dated 05.10.2018, 15.01.2024 and 07.02.2024 are illegal and not in accordance with law.

7. The sole argument raised on behalf of learned counsel for the petitioner with respect to there being a compromise in the criminal proceedings does not in any way further the case of the petitioner, as the judgment in the civil proceedings have attained finality and the objections filed by the petitioner in the execution proceedings have been dismissed. It would also be relevant to note that even in the criminal proceedings, the petitioner was convicted and was further directed to pay compensation of Rs.5,50,000/-. Any compromise in



the criminal proceedings was only for the purpose of acquittal in the said proceedings, as is apparent from order dated 07.06.2022. Moreover, it is not disputed before this Court that the petitioner had withdrawn the application filed under Order 9 Rule 13 CPC. It is not the case of the petitioner before this Court that the compromise was to the effect that the said application under Order 9 Rule 13 CPC would stand allowed or that the judgment and decree of the trial Court would be set aside. Moreover, no compromise has been produced on record and only order dated 07.06.2022 vide which the petitioner has been acquitted in view of compounding of the offence has been placed on record. There is nothing to show that the decree holder was estopped from pursuing execution proceedings for enforcement of the judgment and decree dated 12.07.2016. Rather, the withdrawal of application under Order 9 Rule 13 CPC clearly shows that the compounding in the criminal case was independent of the right of the decree holder to pursue his execution for enforcement of judgment and decree dated 12.07.2016.

8. Keeping in view the abovesaid facts and circumstances, the impugned orders are in accordance with law and deserve to be upheld and the present revision petition being meritless, deserves to be dismissed and is accordingly, dismissed.

9. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid judgment.

04.03.2025

Pawan

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No