

HIGH COURT OF DELHI

Date of decision: 19.12.2023

CORAM: HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

CM(M) 2108/2023 & CM APPL. 66160/2023

SUKHMINDER SINGH Petitioner

versus

LEKH RAM (DECEASED) THROUGH HIS LRS & ORS. Respondents

Legislation and Rules:

Article 227 of the Constitution of India

Order XXI Rule 22 of the Code of Civil Procedure, 1908 (CPC)

Subject:

Challenging the execution order for possession of property issued without show cause notice, contravening Order XXI Rule 22 CPC; subsequent restoration of possession with conditions.

Headnotes:

Violation of Order XXI Rule 22 CPC – Non-issuance of Show Cause Notice – The execution order dated 29.11.2023, involving property in Ranjeet Nagar, New Delhi, challenged for not issuing a show cause notice as mandated by Order XXI Rule 22 CPC when execution is sought more than two years after decree [Paras 3, 9, 10].

Earlier Execution Petition and Dismissal – Prior execution petition (No. 921/2017) involved participation and objections from the petitioner; dismissed for non-prosecution. The current execution petition (Ex. No. 225/2023) filed without restoring the previous one, which was a required procedural step [Paras 3.2, 3.3, 9].

Restoration of Possession and Conditions – Court directed restoration of possession to petitioner with conditions: payment of use and occupation charges at Rs. 50,000/- per month from 01.12.2023 until disposal of objections by the Executing Court [Paras 11-15, 19, 20].

Restoration and Consolidation of Execution Petitions – Execution petition No. 921/2017 restored and directed to be heard along with Ex. No. 225/2023; decree holders to reply to objections within two weeks [Paras 16-18].

Mediation and Compliance Directions – Parties directed to explore mediation at the Delhi High Court Mediation and Conciliation Centre; report of mediation to be sent to Executing Court. Digitally signed order to be treated as certified copy [Paras 21-25].

Referred Cases:

- Desh Bandhu Gupta vs. N.L. Anand & Rajinder Singh (1994) 1 SCC 131

Representing Advocates:

Petitioner: Mr. Jay Savla, Sr. Advocate with Mr. Prabhat Kumar Chaurasia, Mr. Jasdeep Dhillon, Mr. Rajpal Singh

Respondents: Mr. Abhishek Gupta for R1 (a) to (h) and R4, Ms. Nitika Bhutani for R2 and R3, Mr. Sadhu Ram in person for R4

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

CM APPL. 66161/2023 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

CM(M) 2108/2023

1. This petition filed under Article 227 of Constitution of India impugns the order dated 29.11.2023 passed by the ACJ/CCJ/ARC, West District, Tis Hazari Courts, Delhi ('Executing Court') in execution petition bearing EX No. 225/2023, titled as '**Lekh Ram (deceased) & Ors. v. Sukhminder Singh**', whereby the Executing Court has issued warrants of possession with respect to land comprised in Khasra No. 307/20, measuring about 67 sq. yds. situated in the area of Shadipur in the abadi of Ranjeet Nagar, New Delhi, bearing municipal no. 3073/1, Ranjeet Nagar, New Delhi ('suit property').
2. The impugned order has been passed for implementation of the decree dated 21.12.2013 passed by the Trial Court in civil suit no. 555/2012, as upheld by the First Appellate Court vide judgment dated 11.04.2017 in RCA No. 369/2016 and this Court in regular second appeal i.e., RSA No. 17/2018.
3. The learned Senior Counsel for the Petitioner i.e., the judgment debtor, states that the order dated 29.11.2023 passed by the Executing Court is in violation of Order XXI Rule 22 Code of Civil Procedure, 1908 ('CPC'), which necessitates the Executing Court to grant an opportunity by issuing show cause notice to the judgment debtor against whom execution is filed more than two (2) years after the passing of decree.

- 3.1 He states that since the execution petition was filed admittedly more than two (2) years after the date of decree, this was a fit case where a showcase notice should have been issued by the Executing Court.
- 3.2 He states that in the facts of this case admittedly, an execution petition bearing No. 921/2017 was previously filed by the Respondents i.e., decree holders, in which the Petitioner was duly participating and had filed his objections which were pending consideration, when the said execution petition was dismissed on 26.01.2020 for non-prosecution.
- 3.3 He states that in the normal course the decree holders should have taken steps for restoration of the erstwhile execution petition bearing no. 921/2017 and, in that scenario, the Executing Court would have given an opportunity to the judgment debtor to participate in the proceedings.
- 3.4 He states that the Petitioners have been dispossessed on 14.12.2023 by the bailiff and the process by which Petitioner was dispossessed is contrary to the rule of law.
- 3.5 He states on instructions from the Petitioner, who is present in Court, that the execution petition No. 921/2017 be restored and Petitioner be given an opportunity to argue his pending objections; further, status quo ante as regards possession be restored and the Petitioner be put to reasonable terms for continuing to be in possession pending the determination of the said objections.
- 3.6 He states on instructions that Petitioner is willing to pay use and occupation charges of Rs. 50,000/- per month w.e.f. 01.12.2023 until the adjudication and disposal of the objections by the Executing Court. He states that in the event, the objections are dismissed, the Petitioner undertakes to remain bound to pay the said use and occupation charges until the handing over of the possession.
4. Learned counsel for Respondent Nos. 2 and 3 has entered appearance and states that the bailiff after recovering the possession of the suit property from the Petitioner has handed over the keys to the decree holders. She states that Respondent No.3 had received written intimation for providing assistance on 09.12.2023 and has acted in furtherance thereof.
5. Mr Sadhu Ram, who is one of the decree holders, is personally present in Court and is represented by Mr Abhishek Gupta, Advocate. Mr. Abhishek Gupta, Advocate states that Mr. Sadhu Ram is also the Petitioner before the Executing Court and has not been impleaded in this petition. He has also entered appearance on behalf of Respondent No. 1(a) to 1(h).

6. This Court has interacted with Mr. Sadhu Ram and he has confirmed that the keys of the suit property are in his possession. He states that he has no objection in handing over the keys to the Petitioner before the end of the day, subject to the Petitioner undertaking to pay Rs. 50,000/- per month w.e.f. 01.12.2023 as use and occupation charges on the terms and conditions recorded hereinabove. The said statement of Mr. Sadhu Ram is taken on record and is bound down to the same.
7. This Court has considered the submissions of the parties and perused the record.
8. Mr. Sadhu Ram was a plaintiff and a Petitioner in execution petition no. 921/2017. He is impleaded as Respondent No.4. The Petitioner is directed to file an amended memo of parties within three (3) days.
9. The decree is dated 21.12.2013, and therefore, it was more than two (2) years when execution petition bearing Ex. No. 225/2023 was filed. Further, in the facts of this case, it is a matter of record that the decree holders had earlier filed the execution petition bearing No. 921/2017, in which the judgment debtor was duly participating and filed his objections. Therefore, keeping in view the mandate of his Order XXI Rule 22 CPC, this was a fit case where the Executing Court should have issued a show cause notice to the Petitioner before issuing warrants of possession. The filing of the earlier execution petition and its dismissal was in the notice of the Executing Court as is evident from the order dated 26.04.2023 passed in Ex No. 225/2023. The non-issuance of the notice to the decree holder from 21.03.2023 until 29.11.2023 is unexplained from the record.
10. This Court is therefore, satisfied that the impugned order dated 29.11.2023 was not warranted in the facts of this case and has been passed in contravention of the mandate of Order XXI Rule 22 CPC. (Re: **Desh Bandhu Gupta vs. N.L. Anand & Rajinder Singh**¹). The Petitioner has therefore, made out a case for restoration of possession.
11. However, on the other hand, in the facts of this case, the Respondents i.e., decree holders, have three (3) concurrent judgments in their favour holding that they are entitled to a decree of possession for the suit property. The Petitioner herein is obliged in law to comply with the said decree and hand over the possession; but the Petitioner is continuing in possession and has failed to handover the possession even though there is no stay of the said decree of possession.

¹ (1994) 1 SCC 131

12. In these circumstances, in order to balance the interest of the parties, this Court while directing restoration of possession of the suit property to the Petitioner accepts his undertaking that he will pay use and occupation charges of Rs. 50,000/- per month to the decree holder w.e.f. 01.12.2023 until the disposal of the objections by the Executing Court. In the event, the objections are dismissed, the Petitioner will remain liable to pay the use and occupation charges until the date of handing over of peaceful and vacant possession to the decree holders.
13. Mr. Sadhu Ram, newly impleaded Respondent No. 4, is directed to hand over the keys of the suit property, in the office of Mr Abhishek Gupta, Advocate to the Petitioner through his counsel, Mr Rajpal Singh. This exchange will take place on 19.12.2023 at 08:00 P.M. The receiving of the keys will be duly acknowledged by issuing a written receipt.
14.

The first payment of use and occupation charges of Rs. 50,000/- for month of December, 2023, will be paid in cash simultaneously at the time of handing over of the keys. The receipt for the said amount of Rs. 50,000/- will be issued by the decree holder duly counter-signed by Mr Abhishek Gupta, Advocate. The said cash receipt will be handed over to the Petitioner.
15. The payment of use and occupation charges for the month of January, 2024 and subsequent months, however, will be paid only through the authorized banking channels in the bank account of decree holders, details whereof will be given by Mr Abhishek Gupta, Advocate, through email to the counsel for the Petitioner, at the time of handing over the keys. The details of the bank account will also be mentioned on the cash receipt.
16. The parties agree that to expedite the execution proceedings, the erstwhile execution petition No. 921/2017 be restored as the objections of the Petitioner have been filed therein. Accordingly, in the facts and circumstances of this case, execution petition No. 921/2017 is restored to its original number and is directed to be heard and tried along with execution petition no. 225/2023 pending before the Executing Court.
17. The decree holders will file their reply, if not already filed, to the objections filed by the Petitioner within a period of two (2) weeks.
18. The Executing Court is requested to hear and decide the said objections preferably within a period of three (3) months from 03.01.2024 i.e., the next date of hearing already fixed before it.
19. With the aforesaid directions, both the prayer 'a' and prayer 'b' in this petition, stands allowed and possession has been directed to be restored, subject to

- the condition that the Petitioner will continue to pay use and occupation charges of Rs. 50,000/- per month with effect from 01.12.2023.
20. The Petitioner has given an undertaking to this Court that there will be no default in making the payment of the use and occupation charges of Rs. 50,000/- per month, which undertaking has been accepted. It is made clear that if there is any default, it will attract interest of 12% per month. In case of default, the recovery of use and occupation charges along with interest will also be a subject matter of the execution proceedings.
 21. In the facts of this case, this Court also deems it appropriate to give an opportunity to the parties to explore the mediation and accordingly, the parties are directed to appear before the Delhi High Court Mediation and Conciliation Centre on 21.12.2023 at 02:00 P.M.
 22. It is made clear that the reference to Mediation will in no manner affect the schedule set out hereinabove.
 23. The report of the mediation will be sent to the Executing Court in execution petition no. 225/2023.
 24. With the aforesaid directions, the petition stands disposed of. Pending applications stand disposed of.
 25. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

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