

**In the Court of Ms. Manpreet Kaur,
Additional Civil Judge (Senior Division), Ajnala**

CNR No. PBASA00013332023

Case No. EXE/68/2023



Presented on : 07-11-2023

Registered on : 07-11-2023

Decided on : 09-02-2024

Puran Singh Vs. Mukhtiar Singh and Ors

Application to recall the warrants of possession

Present: Sh.Manjit Singh Bhatti Advocate Counsel for DH.
Sh.Rajan Sanyal Advocate Counsel for Jds.

Order:-

This order of mine shall dispose of the application filed by judgment debtors for recalling the warrants of possession.

2. The brief facts of the application are that the decree holder Puran Singh has filed a civil suit bearing No.CS/558/2018 which was decided by this Court vide order dated 11.09.2023. An appeal U/s 96 CPC bearing No.CA/277/2023 is pending in the Court of Sh.Sumit Ghai, Learned Additional District Judge, Amritsar and is fixed for 05.02.2024 in which, the decree holder/respondent intentionally avoiding the service and is not appearing before the Court of Additional District Judge, Amritsar. The appeal filed against the

judgment and decree dated 11.09.2023 is well within the knowledge of the decree holder as advance notice through registered post was served to him. The decree holder intentionally and deliberately by concealing true and material facts, has filed the present execution in which, no notice was ever served to the Jds. In the present execution application, this Court has issued warrants of possession regarding the property of the Jds vide order dated 08.11.2023 without serving notice to the Jds. Even, said execution has been filed by the decree holder on the basis of the judgment and decree dated 11.09.2023 and said judgment and decree dated 11.09.2023 has not become final as the appeal filed by the Jds is also pending before the Court of Sh.Sumit Ghai, Learned Additional District Judge, Amritsar and as such, till the final decision of the said appeal, warrants of possession cannot be issued without issuing notice and providing proper opportunity of hearing to the Jds. As such, order of warrants of possession is required to be called back. If the warrants of possession is not recall back, then the applicants/Jds shall suffer an irreparable loss and injury which cannot be compensated in any manner later on. Hence, the present application.

3. Upon notice, reply to the application filed by ld.counsel for the respondent/DH and contested the present application on the

ground that the application of the applicants is not maintainable, because there is no stay order granted by the Hon'ble Appellate Court to stay the proceedings of the present execution and the execution of the judgment and decreed. The decree holder has filed a civil suit bearing No.CS/558/2018, which was decided by this Court. In the present execution application, this Court has issued warrants of possession regarding the property of the Jds vide order dated 08.11.2023. The notice was already served to Jds. Remaining all averments of the application were denied and prayed for dismissal of the present application.

4. I have heard the rival contentions raised by learned counsels for the parties and have perused the judicial file minutely with their able assistance.

5. The present application has been filed for recalling the warrants of the possession of the property of Jds on the ground that the appeal U/s 96 CPC has been filed by Jds and pending in the Court of Sh.Sumit Ghai, Learned Additional District Judge, Amritsar. Mere filing of appeal by the Jds, no ground to recall back the warrants of possession issued by this Court. The applicant failed to produce any order, wherein operation of judgment and decree has been stayed.

Keeping in view of facts and circumstances, the present application is not maintainable and the same stands dismissed. Let, fresh warrants of possession of the property of Jds be issued for 05.03.2024.

Announced on:-
09.02.2024.
Chetan Steno-II

(Manpreet Kaur), PCS,
Addl. Civil Judge (Sr. Divn.)
Ajnala. (UID Code PB0367)