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*Before M.M. Kumar, J*

GURCHARAN SINGH & ANOTHER,—*Petitioners*

*versus*

GURUDWARA SHRI SINGH SABHA (REGD.),—*Respondent*

C.R. NO. 1124 OF 2004

4th March, 2004

*Code of Civil Procedure, 1908—0.21 R1.32, 0.21 R1.35—  
Constitution of India, 1950—Art.227—Civil Court passing decree for  
mandatory injunction directing the licensees to vacate the demised  
premises—Decree holder seeking execution of the decree—Executing  
Court issuing warrants of possession—Challenge thereto—0.21 R1.35  
CPC provides warrants of possession could be issued in cases of a  
decree directing delivery of possession—Civil Court directing only  
vacation of the demised premises & not ordering handing over of  
possession—Interpretation—Whether order passed by Executing Court  
issuing warrants of possession is illegal—Held, no—Under 0.21  
R1.32(5)CPC, Court is competent to direct that the act required to be  
done may be done so far as practicable either by the D.H. himself or  
by some other person appointed by the Court at the cost of J.D.—  
Direction by the Court to vacate the premises means to direct handing  
over of the possession & nothing else—Decree cannot be defeated by  
raising technical objections—Order passed by Executing Court upheld.*

*Held*, that the pains of the decree holder starts at the stage of execution. Every effort is made by the judgment debtors to defeat the execution of the decree by depriving the decree holders to enjoy the fruits of the decree. Judgment and decree has been passed in favour of the decree holder—respondent by decreeing their suit for mandatory injunction directing the judgment debtor—petitioners to vacate the two rooms and also to pay damages @ Rs. 1000 p.m. from the date of filing of the suit till the vacation of the rooms. A suit for mandatory injunction seeking direction against a licensee to vacate the premises is maintainable in cases where the license has been terminated and suit for possession is not required to be filed because the licensee after termination of his license loses all rights, title or interest over the suit property. Such decrees are executable under 0.21 R1.32.

(Para 7)

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*Further held*, that the Court would be fully competent to direct that the act required to be done may be done so far as practicable either by the decree holder himself or by some other person appointed by the Court at the cost of judgment debtor. In the instant execution of the decree for mandatory injunction, where the possession is sought from a licensee. The said order is consistent with the spirit of law and the explanation added as per the recommendation made by the Law Commission. The direction to vacate the premises situated in the Gurudwara Sahib where the J.D. petitioners were allowed to stay being the sewadars is another form and method to direct hand over of possession. Tweedledee is Tweedledum. It can mean nothing else except the handing over of possession and, therefore, the wider view as suggested by the Law Commission has to be followed because it serves the ends of justice. The decree cannot be defeated by raising technical objections.

(Para 15)

Aman Bahri, Advocate, *for the petitioners.*

B.S. Gugliani, Advocate, *for the Caveator.*

#### JUDGMENT

**M.M. KUMAR, J.**

(1) This petition filed under Article 227 of the Constitution of India read with Section 115 of the Code of Civil Procedure, 1908 (for brevity 'the Code') prays for setting aside order dated 23rd February, 2004 passed by the Civil Judge (Jr. Division), Chandigarh in Execution Application No. 98 of 13th August, 2003. The executing Court has directed that in order to execute the decree for mandatory injunction where direction for vacating the demised premises has been issued, the issuance of warrant of possession would be appropriate course. The decree dated 4th August, 2003 passed by the Civil Judge (Jr. Division), Chandigarh is sought to be executed by the DH—respondent.

(2) It is pertinent to mention that the defendant-respondent filed Civil Suit No. 243 dated 16th August, 2003 for mandatory injunction directing the respondents (JD-petitioner herein) to vacate and hand over the vacant possession of Room No. 7 (two rooms set) situated at Serai attached to the Gurudwara and for the recovery of

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Rs. 84,200 as liquidated damages with effect from 15th June, 1999 to 15th August, 2000 @ Rs. 6000 per month for the unauthorised use and occupation of Room No. 7 and for future damages @ Rs. 6000 per month from the date of filing of the suit till the final realisation.

(3) The JD-petitioners were licensee and were allowed to live in the accommodation provided by DH-respondent because they were working as Sewadars. Later their services were terminated and license to stay in the two room set had also come to an end. The JD-petitioners have admittedly filed suit against their termination which has been dismissed. They have filed an appeal before the learned Additional District Judge which is pending but no interim order has been granted. The suit filed by the DH-respondent has been decreed. The decree dated 4th August, 2003 passed by the Civil Judge (Junior Division) Chandigarh which is sought to be executed reads as under :

“It is ordered that the defendants are directed to vacate the two rooms situated in the Gurudwara within two months from the date of an order. They are further directed to pay damages at the rate of Rs. 1000 per month from the date of filing of the suit till the vacation of rooms.”

(4) When the afore mentioned decree was sought to be executed by the decree-holder-respondent, objection was raised by the Judgement-debtor-petitioner asserting that no warrant of possession could be issued for execution of a decree for mandatory injunction under order 21 Rule 32. The Civil Judge after considering the detailed submissions made by the counsel for the parties and also the various judgements recorded the following order :—

“It is a settled law that in case of a licensee if it is terminated the suit for mandatory injunction is maintainable and the suit for possession is not required to be filed. The licensee after termination of the license, loses any kind of right or title or interest over the suit property and in case of execution of decree of mandatory injunction, no purpose is going to be served by sending the JD to Civil imprisonment or for attachment of the property as the sole purpose of the execution of decree for mandatory injunction is to force the JDs to do an act which has been directed by the court to be done and the court has got ample power

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under Sub Rule 5 to pass an order in addition to or in lieu of the directions to be given to the JD to hand over the possession.

13. Moreover, warrants of possession were earlier issued and *ex-parte* stay was granted and an appeal has been filed against that order. An application for vacation of stay was filed and,—*vide* order dated 27th January, 2004 the stay has been vacated by the Court of Shri J.S. Klar, Ld. Additional District and Sessions Judge, Chandigarh and till date, the JD has not produced any stay order from any court.

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14. Hence if the warrants of possession are issued the same can be put to further judicial scrutiny and if they are found to be wrong, the execution can be stayed and no harm is going to be caused to the JD but in case the JDs put behind the bars by way of civil imprisonment, in decree for mandatory injunction where the possession is sought and in case the order of the Court is found to be unjustified, the prejudice is going to be caused to the JD. The most appropriate order in the execution of decree for mandatory injunction where the possession is sought from licensee, is the issuance of warrants of possession. Hence, the request of the JD for non-issuance of the warrants of possession is declined and request of the ld. DH for issuance of warrants of possession is allowed.”

(5) Shri Aman Bahri, learned counsel for the judgement-debtor petitioners has argued that the order passed by the executing Court suffers from a patent illegality because under Order 21 Rule 32 of the Code no warrant of possession could be issued because the decree passed by the Court does not contemplate handing over of possession. According to the learned counsel once a specific prayer has been made in the suit for handing over possession and even an issue was framed to that effect then it would amount to declining that prayer if no specific directions for handing over possession has been issued in the decree. Therefore what has been declined by the Court passing the decree cannot be granted by the Executing Court by the impugned

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order. He has also referred to Order 21 Rule 35 of the Code to argue that it is only in cases of a decree directing delivery of possession that such an order could be passed and the executing Court has committed an illegality by issuance of warrant of possession. In support of his submission, the learned counsel has placed reliance on a Full Bench judgement of the Delhi High Court in the case of **Sarup Singh versus Daryodhan Singh (1)** and a judgement of this Court in the case of **Prithivi Singh and another versus Natha Ram and another (2)**.

(6) Shri B.S. Gugliani, learned counsel for the decree-holder-caveator has argued that in cases where mandatory directions have been issued for vacating the premises no other interpretation except that possession has to be handed over could be put on such a decree. According to the learned counsel the rooms which are directed to be vacated are situated in the Gurudwara Sahib which were given to the Judgement Debtor-petitioners when they were working as Sewadars of the Gurudwara. After termination of their services in the year 1999 they do not have any right to continue in those rooms and the suit filed by the decree holder-respondent has been decreed in their favour directing the judgement debtor-petitioner to vacate those rooms. It has further been directed that the Judgement debtor-petitioners are to pay damages @ Rs. 1000 p.m. from the date of the filing of the suit till its vacation. In support of his submission, the learned counsel has placed reliance on the judgement reported as **Mst. Hajra versus Abdul Majeed Matoo and others (3)**.

(7) After hearing the learned counsel for the parties and pursuing the judgement and decree dated 4th August, 2003 passed by the Civil Judge and the impugned order passed by the executing Court, I am of the considered opinion that this petition is devoid of merit. It is truly said that the pains of the decree-holder starts at the stage of execution. Every effort is made by the judgement-debtors to defeat the execution of the decree by depriving the decree-holders to enjoy the fruits of the decree. In the present case, judgement and decree has been passed in favour of the decree-holder-respondent by decreeing their suit for mandatory injunction directing the judgement-debtor-petitioners to vacate the two rooms and also to pay damages @ Rs. 1000 p.m. from the date of filing of the suit till the vacation of the rooms. A suit for mandatory injunction seeking direction against

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(1) AIR 1972 Delhi 142

(2) 1980 P.L.J. 199

(3) AIR 1986 J&K 84

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a licensee to vacate the premises is maintainable in cases where the license has been terminated and suit for possession is not required to be filed because the licensee after termination of his license loses all rights, title or interest over the suit property. Such decrees are executable under Order 21 Rule 32, which reads as under :—

- “R.32. Decree for specific performance for restitution of conjugal rights, or for an injunction (1) where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced in the case of a decree for restitution of conjugal rights by the attachment of his property, or in the case of a decree for the specific performance of a contract or for an injunction by his detention in the civil prison, or by the attachment of his property or by both.
- (2) Where the party against whom a decree for specific performance or for an injunction has been passed is a corporation; the decree may be enforced by the attachment of the property of the corporation or, with the leave of the Court, by the detention in the civil prison of the directors or other principal officers thereof, or by both attachment and detention.
- (3) Where any attachment under sub-rule (1) or sub-rule (2) has remained in force for six months (or P) if the judgement-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and shall pay the balance (if any) to the judgement-debtor on his application (A, AP, D, HP, K, MP, M, PU).
- (4) Where the judgement-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of six months D, HP, MP, PU from the date of the attachment, AP, K, M no application to have the property sold has been made, or if made has been refused, the attachment shall cease.

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- (5) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the Court, at the cost of the judgement-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree.

Explanation—For the removal of doubts, it is hereby declared that the expression the act required to be done covers prohibitory as well as mandatory injunctions.

(8) A perusal of sub-rules (1) and (2) of Rule 32 shows that in case of breach of, *inter alia*, an injunction issued by the Court, the provision with regard to detention in Civil prison or attachment of property or both could be invoked. Sub-rule (3) provides the period for which the attachment order could remain in force and thereafter the attached property could be sold. After selling the property, the Court could award compensation to the decree-holder as it may deem just and proper.

(9) The explanation added to sub-rule (5) by amendment with effect from 1st July, 2002 was recommended by the Law Commission in its 154th report because there was conflict of views with regard to the expression act required to be done used in sub-rule (5). It would be appropriate to refer to the observation of the Law Commission, which led to the posing of question leading to the amendment :—

“8.1.1. In the Code of Civil Procedure, there is a provision for punishing disobedience to an injunction issued by the Court. Order 21, rule 32 of the Code deals with the subject. Apart from arrest of the judgement-debtor or attachment of his property for such disobedience, Order 21, rule 32, sub-rule (5) provides that where a decree for specific performance of a contract or for an injunction has not been obeyed, the court may, in lieu of or in addition to other processes mentioned above, direct that “the act required to be done” may be done, so far as practicable, by the decree-holder or some other person appointed by the Court, at the cost of the judgement-debtor. Upon the act being done,

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the expenses incurred in doing it may be ascertained in such manner as the Court may direct and may be recovered as if these expenses were included in the decree.

8.1.2. Question for consideration.—Now a controversy has arisen as to the meaning of the word “act required” in Order 21, rule 32(5) of the Code. Do these words also cover the situation where a prohibitory injunction has been incorporated in the decree or, are they confined to cases where the decree is a mandatory one ?

(10) The Law Commission also noticed two conflicting views on the subject terming them as the wider view and the narrower view. The wider view, which was adopted for amendment is represented by the judgement of Allahabad the judgement-debtor from causing obstruction to a certain pathway. When judgement-debtor started causing obstacles, the decree-holder filed execution application praying:—

- (a) attachment of the offending constructions :
- (b) removal of those constructions :
- (c) detention of judgement-debtor in civil prison.

(11) An objection was raised by the judgement-debtor that the execution of the decree in the manner was not warranted by the provision of Order 21 Rule 32(5). However, the Allahabad High Court held that it was permissible and observed as under :—

“16. The various clauses of R.32 i.e. 1, 2 and 3 are but indirect methods devised to enforce compliance of injunction decrees each being an intermediate step for further action. From this we cannot, however, conclude that execution of decree for prohibitory injunction should end there. When the judgement-debtor commits gross violation of the decree so as to nullify the very decree the execution cannot be so limited and the decree-holder driven to file a fresh suit. Such an interpretation cannot be entertained and would be taking rather a too technical and narrow view of the matter. The law has always expressed its dislike for multiplicity of proceedings and has leaned in favour of an interpretation which could prevent multiplicity of proceedings rather than the one which will generate it.

17. The significant words used there are the court may in lieu of or in addition to all or any of the processes aforesaid



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i.e. attachment of property or detention in civil prison. This expression enlarges the scope of authority of the court to execute the decree in the manner provided in sub-rule (1) or (2) and also under sub-rule (5). The rule empowers the court to direct that the act required to be done may be done so far as practicable by the decree-holder etc. What some courts have interpreted is that the term act required to be done only refers to a mandated act under the decree. This narrow meaning, in my view, cannot be assigned to this term for the act referred to may relate to the one for which decree for specific performance had been granted or to any other act also the performance of which may be essential for enforcing the decree.” (emphasis added)

(12) The Law Commission also noticed the narrower view by referring to the judgements of various High Courts, which are as under :—

- (i) Andhra Pradesh (**Evuru Benkata Subbayya versus Srishti Veerayya** (4).
- (ii) Calcutta (**Hem Chandara versus Narendra Nath.** (5).
- (iii) Karnataka (**Kariyappa versus Haldappa.** (6) (**Bhat J.**
- (iv) Kerala (**Joseph versus Makkaru.** (7) (M.S. Menon and B. Velu Pillai JJ).
- (v) Madras (**Nari Chinnabba Chetty versus E. Chengalroya Chetty.**(8) and
- (vi) Punjab (**Murari Lal versus Nawal Kishore.**(9) (S.S. Dulat and D.K. Mahajan, JJ).

(13) Referring to the judgement of the Full Bench of Delhi High Court in Sarup Singh's case (supra), the Law Commission has observed as under :—

“8.1.10. In a Delhi case (Sarup Singh versus Dieylim Singh, AIR 1972 Del 142 (FB) the comparison was between Order 21, rule 32 and Order 21 rule 35. The injunction issued against the licensee was to vacate the premises occupied

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- (4) AIR 1969 A.P. 92 (DB)
  - (5) AIR 1934 Cal. 402 to 404
  - (6) AIR 1989 Kant. 163
  - (7) AIR 1960 Ker 127, 129
  - (8) AIR 1950 Mad 237
  - (9) AIR 1961 Punjab 547, 549

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by him as license. It was held that steps to evict the licensee would mean, practically, dispossession of the licensee (judgement-debtor). This was not permissible under Order 21 rule 32.

8.1.11. The Delhi case was really one in which the decree against the licensee was to quit and vacate the premises. The decree in question was sought to be enforced under Order 21 rule 32(5). The Court held that rule 32(5) cannot, in the very nature of things, come to the aid of a decree-holder to obtain possession. But the rulings of the other High Courts (mentioned above) do reveal a conflict of decision.”

(14) After noticing the afore-mentioned judgements of various High Courts including the Full Bench judgement of Delhi High Court in Sarup Singh’s case, the Law Commission made recommendations, which led to the insertion of explanation 5. The recommendations of the Law Commission read as under :—

“8.1.12. Recommendation — Clarification is obviously needed on the point at issue. It is suggested that as a matter of legislative amendment, it is preferable to incorporate the wider view (though the majority of the High Courts have taken a contrary view) and to provide that the words “act required to be done” cover prohibitory (as well as mandatory) injunctions. This would also be in conformity with Section 3(2), General Clauses Act, 1897 which provides that in all Central Acts, the words “act” includes illegal omissions. Besides this, on the merits, there is also justification why a decree-holder should be driven to a separate suit for getting relief in the nature of enforcement of a decree which he must have obtained after considerable expenditure of time, labour and money.”

(15) It is in the view of the afore-mentioned historical perspective that the order dated 23rd February, 2004 passed by the Civil Judge has to be examined. The expression act required to be done has been extended to prohibitory as well as mandatory injunctions. The view taken by the Full Bench of Delhi High Court has been treated as a narrower view because that was a case, in which the decree against the licensee was to quit and vacate the premises but the High Court by taking a narrower view expressed its inability to invoke order 21

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Rule 32(5). Therefore, the question posed by the Law Commission, which led to the recommendation for adopting wider view has been accepted by inserting explanation to sub-rule (5). The decree-holder is not required to file another suit when he has already acquired a decree in his favour by spending much time and expense. The Court, therefore, would be fully competent to direct that the act required to be done may be done so far as practicable either by the decree-holder himself or by some other person appointed by the Court at the cost of judgement-debtor. In the instant execution of the decree for mandatory injunction, where the possession is sought from a licensee. The aforesaid order is consistent with the spirit of law and the explanation added as per the recommendation made by the Law Commission. The direction to vacate the premises situated in the Gurudwara Sahib where the judgement-debtor petitioners were allowed to stay being the sewadars is another form and method to direct hand over of possession. Tweedledee is Tweedledum. It can mean nothing else except the handing over of possession and, therefore, the wider view as suggested by the Law Commission has to be followed because it serves the ends of justice. The decree cannot be defeated by raising technical objections. It is well settled that technicalities of law should be construed to advance justice and not to defeat justice. With utmost deference to the ld. Judges, I am of the view that the ratio of the judgement of the Full Bench of Delhi High Court in Sarup Singh's case (supra) stands considerably watered down by Explanation added to sub-rule 5 of Rule 32 of Order 21. The wider view preferred by Allahabad High Court in Harihar Pandey's case (supra) has rightly held that the decree holder cannot be compelled to file another suit for it would multiply litigation which course public policy would discourage. Courts cannot be party to the illegal designs of a Judgement debtor who wishes to carry on with his illegal possession. The ground realities propagated by Realist School of Thoughts led by Jurist like Karl Llewellyn must dawn on the parties to litigation and substantial justice must be done. Therefore, I do not find any ground to interfere with the order passed by the Civil Judge. The petition is liable to be dismissed.

(16) For the reasons recorded above, this petition fails and the same is dismissed.

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**R.N.R.**