

**IN THE COURT OF CIVIL JUDGE, JUNIOR DIVISION,
HARIDWAR**

S.C.C. Execution No. 02 of 2022
ShivKumari Vs. Congress Committee

Date: 04.12.2023

Case called out. Ld. Counsel for the Decree Holder Mr. Vijay Kumar Sharma and Ld. Counsel for Judgment Debtor Mr. K.L.Gupta present. File is listed for order on paper NO. 16C

Disposal of application no. 16C

The above mentioned application has been moved by the Decree holder, wherein it has been averred that the Judgment debtor had filed a Writ Petition no. 1109 of 2022 in the Hon'ble High Court of Uttarakhand against judgment dated 28.04.2022, passed in S.C.C.R. No. 39 of 2013. The Hon'ble Court had vide order dated 21.05.2022, ordered that the judgment debtor shall not be dispossessed form the suit property, provided they continue to pay a sum of Rs. 20,000/- per month, as rent/damages for use and occupation of premises in question on or before 10th day of each succeeding month. The Hon'ble court had also directed that in case of any default, petitioners/judgment debtor shall be evicted forthwith and the respondent shall be at liberty to initiate execution proceedings.

2. That the judgment debtor has not complied with the directions of the Hon'ble Court and out of the sum of Rs. 20,000/- to be paid as rent for use and occupation, sometimes Rs. 10,000/- is being deposited at the begining of the month or at a later period and the remaining 10,000/- is being deposited thereafter, which is clear from the receipts filed by the decree holder. Hence it is prayed that the decree be executed and the

Civil Judge Junior Divison, Haridwar.

decree holder for non compliance of the order of the Hon'ble Court and the decree holder be put in possession of the suit property.

3. The judgment debtor has objected to application number 16c by presenting his objection, paper no. 20c. The averment is that the application of the decree holder is against fact and law. That the judgment debtor has complied with the directions passed by the Hon'ble Court in Writ Petition no 1109 of 2022. That the judgment debtor is sending the use/occupation rent money to the decree holder. Hence, the application of the decree holder is liable to be rejected.

4. The Ld. Counsels for the parties have been heard on previous date. Perused file.

5. Upon perusal of file, it is evident that the decree holder had filed an S.C.C. suit no 09 of 2007, which was decreed on 17.10.2013. The judgment debtor of this execution case thereafter filed an S.C.C.R. no. 39 of 2013, which was rejected and thereafter the judgment debtor filed Writ Petition No. 1109 of 2022 before The Hon'ble High Court of Uttarakhand, wherein the Hon'ble Court was pleased to pass the following order on 21.05.2022

“ Considering the submission advanced by learned counsel for the parties, it is directed that, till the next date of listing, petitioners shall not be dispossessed, provided they continue to pay a sum of Rs. 20,000 /- per month, as rent/damages, for use and occupation of the premises in question to the landlord w.e.f. June. 2022 on or before 10th day of each succeeding month. Petitioner shall also deposit the entire decretal amount before the learned Court below within four weeks, after adjusting the amount already deposited. In case of any default, petitioners shall be

evicted forthwith and the respondents shall be at liberty to initiate execution proceedings.”

6. The order passed by the Hon’ble Court specifically states that the judgment debtor should deposit a sum of Rs. 20,000/- per month as rent/damages, for use and occupation of the suit property on or before the 10th of every succeeding month and in case of any default, which is inclusive of the aforementioned condition imposed by the Hon’ble Court, the judgment debtor shall be evicted forthwith and the respondents shall be at liberty to initiate execution proceedings.

7. It is pertinent to note that the decree holder has initiated this present execution proceeding on 04.08.2022, i.e. after the passing of the order by The Hon’ble Court dated 21.05.2022. It is now to be seen, whether the judgment debtor has defaulted on the conditions imposed by the Hon’ble Court vide order dated 21.05.2022 and whether the judgment debtor is liable to be evicted for default of conditions imposed by the Hon’ble Court.

8. In support of the averments of the application, the decree holder has presented the original Money Order receipt sent by the judgment debtor to the decree holder in compliance of order of Hon’ble Court dated 21.05.2022, vide paper no.s 21A1/1 to 21A1/6. From receipts filed by paper no. 21A1/1 and 21A1/2, it is clear that for the month of January, 2023 the rent was deposited via Money order, which is undisputed, in the following manner:

1. Rs. 5,000/- on 17.02.2023
2. Rs. 5,000/- on 17.02.2023
3. Rs. 5,000/- on 24.02.2023
4. Rs. 5,000/- on 24.02.2023

9. The receipts filed vide paper no. 22A1/3 to 21A1/4, shows that the rent for the month of February, 2023 has been paid via Money order, which is undisputed, in the following manner:

1. Rs. 5,000/- on 10.03.2023
2. Rs. 5,000/- on 10.03.2023
3. Rs. 5,000/- on 23.03.2023
4. Rs. 5,000/- on 23.03.2023

10. The receipts filed vide paper no. 22A1/5 to 21A1/6, shows that the rent for the month of March, 2023 has been paid via Money order, which is undisputed, in the following manner:

1. Rs. 5,000/- on 13.04.2023
2. Rs. 5,000/- on 13.04.2023
3. Rs. 5,000/- on 24.04.2023
4. Rs. 5,000/- on 24.04.2023

11. It is pertinent to note that the judgment debtor has filed receipts 19C1/1 to 19C1/4, for rent of the month of August, 2023 via Money order, which is undisputed, which shows that the rent has been paid on 01.09.2023

12. It is pertinent to note that from the receipts filed by the decree holder, it is clear that the judgment debtor has failed to abide by the conditons imposed by the Hon'ble Court vide order dated 21.05.2022, passed in Writ Petition No. 1109 of 2022, wherein the condition was specific that the rent has to be deposited on or before the 10th of every succeeding month. The Judgment debtor has only deposited the rent on time after the decree holder had moved this present application on 28.04.2023.

13. It is also pertinent to note that the parties have not filed any other order passed by the Hon'ble Court in Writ Petition no. 1109 of 2022, wherein the conditions imposed by the Hon'ble Court vide order dated 21.05.2022 has been modified or rescinded by the Hon'ble Court. Therefore, as per the documents available on record, the judgment debtor was bound to adhere to the conditions imposed by the Hon'ble Court in Writ Petition no. 1109 of 2022, vide order dated 21.05.2022 and deposit the rent for use and occupation of the premises on or before the 10th of every succeeding month.

14. As discussed earlier, upon the presentation of this application by the decree holder dated 28.04.2023, the judgment debtor was in default of the conditions imposed by the Hon'ble Court, which is proven by the receipts produced by the decree holder vide paper no.s 21A1/1 to 21A1/6. Therefore, in light of the order passed by the Hon'ble Court in Writ Petition no. 1109 of 2022, the judgment debtor is liable to be evicted from the suit property.

15. Accordingly, the application of the decree holder is liable to be accepted, This Court passes the following

Order

The application of the Decree Holder, paper number 16C is allowed. The objections of the Judgment Debtor are accordingly disposed off.

The Court Amin is directed to put the decree holder in possession of the suit property as mentioned in the plaint and is also authorised to remove any person bound by the decree passed in S.C.C. Suit no. 09 of 2007, who may refuse to vacate the suit premises.

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The Decree Holder is directed to take necessary steps for eviction of the Judgment Debtor from the suit premises as per Order 21 Rule 35, read with Form no. 11, Appendix E, Code of Civil Procedure, 1908.

File be put up for Eviction report on 20.12.2023.

(Vivek Singh Rana)
Civil Judge, Junior Division
Haridwar

Civil Judge Junior Divison, Haridwar.