
(1995) 07 SHI CK 0004

In the High Court Of Himachal Pradesh

Case No : Civil Revision Petition No. 110 of 1995

M/s. K.N. Trading Company

APPELLANT

Vs

Masonic Fraternity of Shimla

RESPONDENT

Date of Decision : 12-07-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47, 47(2)
Himachal Pradesh Urban Rent Control Act, 1971 — Section 14
Himachal Pradesh Urban Rent Control Act, 1987 — Section 14(2)

Citation : (1995) 2 ShimLC 342

Hon'ble Judges : Kamlesh Sharma, J

Bench : Single Bench

Advocate : Om Parkash, for the Appellant; Bhupender Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Kamlesh Sharma, J.—With the consent of the Counsel for the parties, the revision petition is heard and disposed of finally. By way of this revision petition the Petitioner-judgment debtor has challenged the order dated 17-5-1995 whereby its objections in Execution Petition No. 120/10 of 1994 pending in the Court of Senior Sub-Judge, Shimla are dismissed and warrant of possession has been issued.

2. This case has a chequered history. Its facts in brief are that in a petition u/s 14 of the Himachal Pradesh Urban Rent Control Act, 1971 eviction order dated 7-1-1978 was passed by the Rent Controller Shimla against the Petitioner-judgment debtor on the ground of non-payment of rent, which was further affirmed in an appeal by the Appellate Authority by order dated 2-9-1978. The revision petition filed by the Petitioner-judgment debtor was dismissed as withdrawn by order dated 12-1979, as by that date the amount of rent determined by the Rent Controller stood deposited but validity of the said deposit was left open to be agitated by the parties in appropriate proceedings.

3. Thereafter, the Respondent-decree holder filed Execution Petition before the

Rent Controller, Shimla which was resisted by the Petitioner- judgment debtor by filing objections but failed. The objections were dismissed by the Rent Controller by order dated 26-9-1981, against which revision petition was filed in this Court which was also dismissed on 21-5-1982 upholding the order dated 26-9-1981 of the Rent Controller and holding that the deposit of arrears of rent beyond the period of 30 days from the date of the eviction order was not legal and valid and eviction order could be avoided only if the amount due would have been paid within the prescribed period, which can neither be enlarged nor abridged by the Court.

4. Against the order of this Court the Petitioner-judgment debtors and Ors. preferred S.L. Ps which were allowed by the Supreme Court and Civil Appeal Nos. 1130/91 and 2117/82 were registered but ultimately the said civil appeals were dismissed by the following orders on 13-4-1994:

Civil Appeal 1130/91.-The short question raised before us whether the period of 30 days u/s 14(2) of Himachal Pradesh Urban Rent Control Act, 1987 (2 (a) provision) could be extended is covered by the JT 1993 (I) . 162 Madan Mohan and Anr. v. Krishan Kumar Sood. Then again merely because the Appellant had complied with the order of Rent Controller in depositing the rent within 30 days it does not mean the principle of merger would apply where the appellate Court had fixed a different rent of Rs. 475 and passed the judgment on 13-4-1979. In such a case, the deposit made on 19-5-1972 (sic) is beyond the 30 days contemplated under the proviso. There are no merits. Civil Appeal 1130/91 is dismissed.

Civil Appeal 2117/82.-In view of the judgment reported in Madan Mohan and Anr. v. Krishan Kumar Sood, (1993) 1 SCR 107 this appeal is dismissed. No costs.

Three months" time is granted with usual undertaking to be filed within four weeks.

Thereafter, the Respondent-decree holder filed Execution Petition No. 120/10 of 1994, in which the Petitioner-judgment debtor company was served for 21-10-1994, on which date time was taken to file objections. When despite further opportunities, objections were not filed, the executing court proceeded to issue warrant of possession on 29-1-1995, against which order Civil Revision No. 17 of 1995 was filed in this Court The said Civil Revision was heard and finally disposed of on 28-4-1995 with a direction to the Petitioner-judgment debtor to file objections within two weeks from the date of the order, which would be disposed of by the executing court within one week keeping in view the orders of the apex Court. It was made clear that no further opportunity would be granted to the Petitioner-judgment debtor. In pursuance of this order, the Petitioner-judgment debtor filed objections, which have been decided by the impugned order and again warrant of possession has been issued. Hence, the present revision petition.

5. This Court has heard learned Counsel for the parties and gone through the

record The main submission of Pt. Om Parkash, learned Counsel for the Petitioner-judgment debtor, is that due opportunity is not given by the executing court to the Petitioner-judgment debtor to substantiate its objections that the premises in dispute are in possession of the tenants, who are necessary parties to the execution petition, in the absence of whom the possession of the premises cannot be taken in execution of the eviction order against the Petitioner-judgment debtor. Referring to Section 47 of the Code of Civil Procedure, Pt. Om Parkash has further urged that all questions arising between the parties to the suit relating to the execution of the decree in question are required to be determined by the executing court and filing of separate suit is debarred. The proper course for the executing court was to frame issues on the objections raised by the Petitioner-judgment debtor, call for evidence and thereafter decide the objections.

6. On the other hand, Shri Bhupender Gupta, learned Counsel for the Respondent-decree holder, has argued that in view of the vague allegations made in the objections, no triable issue arose calling for the determination by adducing evidence, as such, the executing court has rightly dismissed the objections summarily. To substantiate his submission he has cited case law, which will be referred to hereinafter.

7. The submission made on behalf of the Petitioner-judgment debtor is without any substance. The perusal of objections, which are reproduced in para 2 of the impugned order, will show that only vague allegations have been made that the Petitioner-judgment debtor has inducted tenants in the premises in dispute who are necessary parties, without stating that who are those tenants and at what point of time they were inducted as tenants. Though it is claimed that the Petitioner judgment-debtor has a right under a lease executed between the parties to rent out the premises to different tenants, yet the particulars of the alleged lease have not been given. Therefore, on such type of pleadings, no triable issue arose which could be framed and determined. In the backdrop of the case, the resume of which is given hereinabove, it is clear that the only purpose of the Petitioner- judgment debtor to file the objections is to delay the handing over of the possession of the premises in dispute. It may be observed here that under Sub-section (2) of Section 47 of the Code of Civil Procedure, as it existed before its amendment, the executing court was authorised to treat the proceedings under this section as a suit and vice versa but after the amendment of this section w.e.f. 1-2-1977, the power conferred upon the Court to treat an application u/s 47 of the CPC as a suit, has been specifically withdrawn, which shows that the executing court is within its jurisdiction to proceed to decide the application u/s 47 i.e. objections summarily, if no triable issue arises from the pleadings. [Please refer to: Kulraj Singh Paul Vs. Ranjit Kaur and Another, and Harnek Singh v. Padam Kaur 1989 SCC 161 (P & H) .

8. The Petitioner-judgment debtor has not given particulars of the alleged agreement under which it has inducted tenants in the premises in dispute, as

alleged by it. Had the alleged induction of tenants been before the order dated 13-4-1994, when its appeal was decided by the Supreme Court, the Petitioner-judgment debtor would have pointed out in the proceedings pending in different courts. However, even if it is assumed that the premises in dispute are in possession of sub lessees inducted by the Petitioner-judgment debtors, they are bound by the eviction order obtained by the Respondent-decree holder, no matter whether the sub-lessees were inducted before or after the eviction order, which has become final between the parties. The alleged possession of sub-lessees inducted by the Petitioner-judgment debtor is not in their independent capacity but through the Petitioner-judgment debtor only, as such, they are liable to hand over possession in execution of the decree/eviction order against the Petitioner-judgment debtor. Had it not been the legal position, all eviction orders would be avoided by the tenants on the ground that they have inducted sub-lessees in the premises in dispute and unless rights of those sub-lessees are determined, the possession of tenanted premises cannot be handed over in execution of eviction order.

9. The result of above discussion is that there is no merit in this revision petition and it is dismissed. No order as to costs. The records be sent to the executing court without any further delay. The parties will appear before the executing court on 25-7-1995.