

(2013) 10 P&H CK 0254
In the Punjab And Haryana At Chandigarh
Case No : C.R. No. 4360 of 2013 (O and M)

Rana Mahajan and Another	Vs	APPELLANT
Shri Purshottam Krishan and Others		RESPONDENT

Date of Decision : 11-10-2013

Acts Referred:

Citation : (2014) 175 PLR 149

Hon'ble Judges : Paramjit Singh Patwalia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Paramjeet Singh, J.—The Hon''ble Supreme Court commented on the plight of a decree holder in India and observed as under in *Satyawati Vs. Rajinder Singh and Another*, . 2. In relation to the difficulties faced by a decree holder in execution of the decree, in 1872, the Privy Council had observed that

.....the difficulties of a litigant in India begin when he has obtained a Decree.....

3. Even today, in 2013, the position has not been improved and still the decree holder faces the same problem which was being faced in the past. We are concerned with the case of the appellant-plaintiff who had succeeded in Civil Appeal No. 89 of 1993 in the Court of District Judge, Faridabad on 19th January, 1996. Decree was drawn in pursuance of the aforestated judgment but till today, the appellant-plaintiff is not in a position to get fruits of his success.

In the present case, the plight of respondent No. 1 (for convenience of reference hereinafter referred to as decree-holder) is even worse as he has been litigating since 1978 and undergoing the whirlwind of law in getting the fruits of ejectment order passed in 1985 by the Rent Controller which attained finality after number of rounds in this Court and the Hon''ble Supreme Court, with the decision of Civil Revision No. 3122 of 2007, between the decree holder and respondents No. 2 and 3 (for convenience of reference hereinafter referred to as judgment debtors),

by this Court vide order dated 25.04.2008.

2. Thereafter, the decree holder sought execution of judgment/order passed in the year 1985, but till date, the decree holder has not been able to take possession in spite of ejectment order in his favour.

3. Instant civil revision under Article 227 of the Constitution of India arising from the objections filed by the petitioners, who are third party (hereafter to be referred as objector) is for setting aside the order dated 18.03.2013 (Annexure P-1) passed by learned Additional Civil Judge (Sr. Divn.), Amritsar whereby objections preferred by the petitioners-objectors have been dismissed as well as against the order dated 25.05.2013 (Annexure P-2) passed by learned Additional District Judge, Amritsar whereby the appeal preferred by the objectors has been dismissed.

4. The facts necessary for disposal of the present petition are to the effect that decree holder-Purshottam Krishan filed ejectment petition against Jagdamba Tea Factory and Nand Kishore with regard to the property in dispute situated outside Ghee Mandi Gate, Bagh Raj a Ralia Ram, Amritsar. The said petition was allowed by learned Rent Controller vide judgment dated 26.07.1985. Feeling aggrieved with the said order, respondents No. 2 and 3-tenants filed appeal before learned Appellate Authority, Amritsar which was allowed vide order dated 02.05.1986 and the findings of learned Rent Controller were reversed. Feeling aggrieved by the order dated 02.05.1986, respondent No. 1 herein preferred Civil Revision No. 2459 of 1986 which was partly allowed by this Court on 04.08.2004 and the case was remanded to learned lower Appellate Authority, Amritsar to record its findings on issue No. 6. SLP against the order dated 04.08.2004 was dismissed by the Hon''ble Supreme Court. Thereafter, learned Appellate Authority, Amritsar upheld the findings of learned Rent Controller on issue No. 6 and directed ejectment of respondents No. 2 and 3-tenants from the property in dispute. Feeling aggrieved by the order of learned Appellate Authority, Amritsar, the tenants preferred Civil Revision No. 3122 of 2007 in this Court which was dismissed vide order dated 25.04.2008. Thus, the judgment dated 26.07.1985 passed by learned Rent Controller has attained finality. It would be pertinent to mention that earlier the parties had approached this Court as well as the Hon''ble Apex Court in number of rounds of litigation during the last 30 years. For execution of the judgment dated 26.07.1985 passed by learned Rent Controller, respondent No. 1 herein filed execution application. Earlier, he was litigating with the tenants, now respondent No. 1 is facing the hurdles created at the instance of the petitioners, who are third party and have allegedly taken the land in question on rent during the pendency of the proceedings between respondent No. 1 and respondents No. 2 and 3. The alleged tenancy was oral and thereafter the rent note was executed on 1.8.2000. In the execution application, the petitioners herein filed objections under Order XXI Rules 35, 36, 58, 96, 99, 101, 120 read with Section 151 of the Code of Civil Procedure(in short "the Code") alleging that they have taken land measuring 1000 square yards i.e. 80 x 25

yards forming part of khasra No. 2 and property bearing No. 2577/11-37 from Hari Chand & Sons and Maharaj Chand & Sons through Karamjit Singh and Mohinder Chand Kumaria and Bhupinder Chand Kumaria, on rent by delivery of possession and the rent note was executed. The petitioners have raised construction and also obtained electricity connection in the said premises. The petitioners are carrying on their own business in the premises in dispute and have opened account with UCO Bank. The petitioners have taken the property in question on rent bonafidely for valuable consideration. The objectors-petitioners were never a party to any such litigation and respondent No. 1 has no right to take possession of the property under the possession of the petitioners. Vide order dated 18.03.2013, the Executing Court dismissed the objections filed by the petitioners-objectors. Feeling aggrieved by the order dated 18.03.2013, the petitioners-objectors preferred appeal which has also been dismissed vide order dated 25.05.2013 passed by learned Additional District Judge, Amritsar. Hence, this revision petition.

5. I have heard learned counsel for the parties and perused the record.

6. Learned counsel for the petitioners has vehemently contended that the portion shown in yellow colour in the site plan (Annexure P-6) is being used as a passage for approach to the portion which is in possession of the petitioners. The petitioners have no concern with the remaining portion regarding which ejectment order has been passed. The learned counsel has further contended that the petitioners have been running their business for the last 10-12 years and respondent No. 1 has never raised any objection to the same. The learned counsel has further contended that when objections had been filed, Executing Court is bound to frame issues and permit parties to lead evidence and thereafter decide the issues specifically when the third party disputes the title of the decree holder to the property in dispute. In support of his contentions, the learned counsel has relied upon judgment of this Court in Kewal Krishan and Ashok Kumar Vs. Shri S.P.S. Bhullar and Another, .

7. Learned senior counsel for respondent No. 1, on the other hand, has supported the findings recorded in the impugned orders. The learned senior counsel has further contended that respondent No. 1 has been litigating for the last more than 30 years with regard to the property in dispute. The objections have been filed just to delay the proceedings so that respondent No. 1 could not take the possession of the disputed property and frivolous objections have been filed, otherwise also, rent note is hit by the principle of lis pendens as the said rent note is alleged to have been executed during the pendency of litigation. The learned senior counsel has further contended that the property occupied by judgment debtors and objectors are the same and the alleged rent note has been executed in collusion with the judgment debtors. Even the rent note dated 01.08.2000 has been signed by Sumit Goenka, who is none else but legal representative of Nand Kishore-respondent No. 3, who was party to the earlier litigation. Besides Sumit Goenka, there are other legal heirs of Nand Kishore

against whom the order was passed. In support of his contentions, learned counsel has relied upon *Usha Sinha Vs. Dina Ram and Others*, .

8. I have given my conscious thought to the rival contentions of learned counsel for the parties.

9. The CPC contains elaborate and exhaustive provisions for dealing with all aspects which may arise in execution proceedings. Numerous Rules of Order XXI of the Code take care of different situations in execution and provide for effective remedies not only to judgment debtors and decree holders but also to the third party objectors, as the case may be. Rules 97 to 106 of Order XXI of the Code are relevant to decide questions as arise in the present petition for determination which read as under:

97. Resistance or obstruction to possession of immovable property. - (1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

(2) Where any application is made under sub-rule (1), the court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

98. Orders after adjudication. - (1) Upon the determination of the questions referred to in rule 101, the court shall, in accordance with such determination and subject to the provisions of sub-rule (2),

(a) make an Order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(b) pass such other Order as, in the circumstances of the case, it may deem fit.

(2) Where, upon such determination, the court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the court may also, at the instance of the applicant, order the judgment debtor, or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days.

99. Dispossession by decree holder or purchaser. - (1) Where any person other than the judgment debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the court complaining of such dispossession.

(2) Where any such application is made, the court shall proceed to adjudicate

upon the application in accordance with the provisions herein contained.

100. Order to be passed upon application complaining of dispossession.--Upon the determination of the questions referred to in rule 101, the court shall, in accordance with such determination,

(a) make an Order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(b) pass such other Order as, the circumstances of the case, it may deem fit.

101. Question to be determined.--All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the court dealing with the application, and not by a separate suit and for this purpose, the court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.

102. Rules not applicable to transferee pendente lite.--Nothing in rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.

103. Orders to be treated as decrees.--Where any application has been adjudicated upon under rule 98 or rule 100, the Order made thereon shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree.

104. For the purpose of all proceedings under this order, service on any party shall be deemed to be sufficient if effected at the address for service referred to in Order XIII, Rule, subject to the provisions of Order VII, Rule 24, provided that this rule shall not apply to the notice prescribed by Rule 22 of this Order.

105. Hearing of application. - (1) The Court, before which an application under any of the foregoing rules of this Order is pending, may fix a day for the hearing of the application.

(2) Where on the day fixed or on any other day to which the hearing may be adjourned, the applicant does not appear when the case is called on for hearing, the Court may make an order that the application be dismissed.

(3) Where the applicant appears and the opposite party to whom the notice has been issued by the Court does not appear, the Court may hear the application ex parte and pass such order as it thinks fit.

106. Setting aside orders passed ex parte, etc. - (1) The applicant, against whom an order is made under sub-rule (2) of rule 105 or the opposite party against whom an order is passed ex parte under sub-rule (3) of that rule or

under sub-rule (1) of rule 23, may apply to the Court to set aside the order, and if he satisfies the Court that there was sufficient cause for his nonappearance when the application was called on for hearing, the Court shall set aside the order on such terms as to costs or to otherwise as it thinks fit, and shall appoint a day for the further hearing of the application.

(2) No order shall be made on an application under sub-rule (1) unless notice of the application has been served on the other party.

(3) An application under sub-rule (1) shall be made within thirty days from the date of the order, or where, in the case of an ex parte order, the notice was not duly served, within thirty days from that date when the applicant had knowledge of the order.

10. A perusal of above provisions makes it clear that a person acquiring right in the disputed property during the pendency of litigation has no right to resist or obstruct execution of decree/order passed by a competent Court. The doctrine of lis pendens applies and it is treated as a constructive notice to the person acquiring any right during the pendency of lis who is, therefore, bound by a decree/order passed in the pending suit/proceeding. The doctrine is based on the principle that such a person acquiring right from the judgment debtor during the pendency of the suit has no independent right to resist, obstruct, or object to the execution of a decree/order. Resistance at the instance of such person/transferee or obstruction by a person on the basis of such right is not entitled to claim adjudication, rather it is a mere attempt just to delay the execution.

11. In the present case, respondent No. 1 filed eviction petition on 05.04.1978 which was allowed vide judgment and decree dated 26.07.1985, however, the said order was set aside by the Appellate Court on 02.05.1986. Feeling aggrieved by the said order, respondent No. 1 herein filed revision before this Court and vide order dated 04.08.2004, the case was remanded for fresh decision by the Appellate Court. The order dated 04.08.2004 was challenged by way of SLP No. 26480 of 2004 by the judgment debtors which was dismissed vide order dated 06.01.2005 by the Hon'ble Apex Court. Thereafter, the rent appeal was dismissed and ejectment order passed by the Rent Controller was affirmed on 01.05.2007. Feeling aggrieved by the order dated 01.05.2007, revision was filed which was dismissed vide order dated 05.04.2008. Thereafter, respondent No. 1 filed the execution petition. The alleged rent note on the basis of which the petitioners-objectors are claiming possession was executed in the year 2000 i.e. during the pendency of the proceedings which commenced on 05.04.1978 on the filing of ejectment petition before the Rent Controller.

12. The contention of the petitioners-objectors is that they are in possession of the property which is different from the property regarding which the decree holder has sought possession and the petitioners claim on the basis of the oral tenancy and the rent note dated 01.08.2000 and on that basis, the possession is allegedly taken by the petitioners. This contention of the petitioners-objectors is

not sustainable. The alleged rent note dated 01.08.2000 has been firstly executed during the pendency of the litigation between respondent not and respondents No. 2 and 3. The witness to the alleged rent note is Sumit Goenka, who is none else but is the legal representative of Nand Kishore-judgment debtor. It appears that there is a collusion between the objectors and judgment debtor in creating such type of rent note so that respondent No. 1 could be deprived of taking possession. Otherwise also, perusal of the rent note propounded by the objectors shows that it does not relate to the property for which the possession is being sought. The only claim of the objectors, as argued before this Court, is that they are only claiming passage to their property which is shown in yellow in the site plan. This contention does not survive as the yellow portion runs through the entire vacant portion of the property of respondent No. 1-decree holder and in the ejectment order, there is no reference to the existence of such passage, nor judgment debtors from whom the petitioners claim to have taken on lease have raised an objection that there exists any passage. Apart from the rent note, there is no document on the file showing existence of the passage.

13. The contention of the petitioners that they have been running business in the premises since long is also not sustainable. The claim of the petitioners-objectors is that they had been running the business since April, 1998 under the name and style of Mahajan Agencies at Ghee Mandi Gate, Amritsar. On record only one assessment order dated 20.09.2002 passed by the Excise and Taxation Authority is available. The case of the petitioners is that their agency is running since 1st, April, 1998 till 31st of 1999, but the perusal of assessment order shows that this order is with regard to the assessment year 1999-2000. It would clearly indicate that Mahajan Agencies had been doing the business since April, 1998, then the contention of the objectors that the agency had taken vacant land on rent vide rent note dated 01.08.2000 and thereafter raised construction and business, got telephone number, obtained sales tax number and became income tax assessee and the property was also assessed to house-tax, would become futile. It becomes apparent that all the documents have been created just to create evidence. If the Agency would have been continuing in business, the petitioners must have been filing the assessment before the authorities in the relevant years. Since the order dated 20.09.2002 is for the assessment year 1999-2000, the same is certainly an afterthought and had been passed during the pendency of litigation. Both the Courts below have recorded concurrent findings of fact with regard to the existence of the documents and have also commented against the alleged agreement.

14. In the face of these facts, this Court has to consider whether issues were required to be framed and thereafter another full trial of the objections raised by the objectors is required to be carried out. It is settled law that a third party to the decree who offers resistance can proceed under Order XXI of the Code if an adjudication is warranted as a consequence of the resistance or obstruction made by him to the execution of decree. No doubt if the resistance is made by

objectors acquiring rights during the pendency of the proceedings from the judgment debtor, the scope of adjudication would shrink to the limited question as to whether such transferee has any right to resist in view of the clear language contained in Rule 102 of Order XXI of the Code. While interpreting the said Rule, the Hon''ble Supreme Court in Usha Sinha (supra) observed as under:

12. Bare reading of the rule makes it clear that it is based on justice, equity and good conscience. A transferee from a judgment debtor is presumed to be aware of the proceedings before a Court of law. He should be careful before he purchases the property which is the subject matter of litigation. It recognizes the doctrine of lis pendens recognized by Section 52 of the Transfer of Property Act, 1882. Rule 102 of Order XXI of the Code thus takes into account the ground reality and refuses to extend helping hand to purchasers of property in respect of which litigation is pending. If unfair, inequitable or undeserved protection is afforded to a transferee pendente lite, a decree holder will never be able to realize the fruits of his decree. Every time the decree holder seeks a direction from a Court to execute the decree, the judgment debtor or his transferee will transfer the property and the new transferee will offer resistance or cause obstruction. To avoid such a situation, the rule has been enacted.

In view of above, the petitioners have no right to raise objections, at this stage.

15. So far as the contention of learned counsel for the petitioner that issues were required to be framed is concerned, it is not sustainable, as sufficient opportunities of being heard have been provided by the Executing court to the petitioners. Otherwise also, it is settled law that when on its face, objections are found to be frivolous, no issues are required to be framed. In the present case as discussed in the foregoing paragraphs, apparently, the petitioners in connivance with the judgment debtors, just to delay the execution have raised such objections and respondent No. 1 is yet to get the fruits of the decree passed in 1978.

16. In Babu Lal Vs. Hazari Lal Kishori Lal and Others, , the Hon''ble Supreme Court observed in para 29 as under:

Procedure is meant to advance the cause of justice and not to retard it. The difficulty of the decree holder starts in getting possession in pursuance of the decree obtained by him. The judgment debtor tries to thwart the execution by all possible objection.....

17. Further in Shub Karan Bubna @ Shub Karan Prasad Bubna Vs. Sita Saran Bubna and Others, , the Hon''ble Supreme observed in para 27 as under:

The proverbial observation by the Privy Council is that the difficulties of a litigant begin when he obtains a decree. It is necessary to remember that success in a suit means nothing to a party unless he gets the relief. Therefore, to be really meaningful and efficient, the scheme of the Code should enable a party not only to get a decree quickly, but also to get the relief quickly. This requires a

conceptual change regarding civil litigation, so that the emphasis is not only on disposal of suits, but also on securing relief to the litigant.

Recently in *Satyawati* (supra), the Hon''ble Supreme Court observed as under:

17. As stated by us hereinabove, the position has not been improved till today. We strongly feel that there should not be unreasonable delay in execution of a decree because if the decree holder is unable to enjoy the fruits of his success by getting the decree executed, the entire effort of successful litigant would be in vain.

18. In view of above, I do not find any illegality or perversity in the impugned orders. There has been frightful delay, firstly caused by the judgment debtors and thereafter by the petitioners-objectors which has made respondent No. 1-decree holder to face protracted litigation and deprived him of the benefits of the eviction order of court for long time, the petition is dismissed with costs of Rs. 30,000/-.