

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.4101 of 2014 (O&M)

Reserved on:23.12.2014

Date of decision:07.01.2015

Madhubala Soni

....Petitioner

Versus

Pardeep Kumar Soni & others

.....Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr.Arun Bansal, Advocate, for the petitioner.

Mr.M.K.Verma, Advocate, for respondent No.1.

G.S.Sandhawal J.

Challenge in the present revision petition, filed under Article 227 of the Constitution of India read with Section 115 CPC, is to the order dated 11.04.2014 (Annexure P3), passed by the Executing Court whereby the objections filed in the suit for specific performance and possession (Annexure P2) have been dismissed by holding that there was nothing to show that the petitioner was in possession before the litigation commenced and that the principles of *lis pendence* were applicable. The objector claims to be a tenant in the premises which are subject matter of execution. The subsequent order, issuing warrants of possession by breaking the locks and providing police help is also subject matter of challenge.

Counsel for the petitioner has vehemently argued that once the petitioner had an independent right in the property as a tenant, then issues should have been framed in the objections in view of the Order 21 Rule 99 to 101 CPC and has placed reliance upon the judgment of the Apex Court in **Brahmdeo Chaudhary Vs. Rishikesh Prasad Jaiswal & another (1997) 3 SCC 694** and

judgments of this Court in **Baljit Singh Vs. Balkar Singh 2001 RCR (Civil) 180** and **Kartar Singh Vs. Gurmit Singh & another 2002 (4) RCR (Civil) 801.**

Counsel for the respondent, on the other hand, has placed reliance upon judgment of the Apex Court in **Usha Sinha Vs. Dina Ram & others 2008 (3) RCR (Civil) 145** to submit that rule of *lis pendence* would apply and the Court had examined the issue and found that the petitioner was never in possession prior to the litigation and therefore, her objections had rightly been dismissed.

A perusal of the facts of the case would go on to show that the plaintiff-respondent No.1 filed a suit for specific performance regarding the two storey house measuring 91 sq.yards on the strength of an agreement dated 25.06.1998, by taking the plea that he had paid an amount of Rs.4 lacs out of the settled amount of Rs.4,21,000/-. The property had been alleged to be sold to respondent No.3 vide sale deed dated 09.12.1998, which was a sham transaction. The suit was decreed on 27.10.2004 and a decree for possession by way of specific performance was granted to the plaintiff-respondent No.1, entitling the defendant-respondents to execute and register the sale deed in respect of the said house on payment of balance of Rs.21,000/-. The judgment-debtor was to deliver possession of the house in dispute to the plaintiff within a period of one month, thereafter, as per the judgment.

However, it seems that the relief of possession was never incorporated in the decree. An appeal came to be filed by respondent No.3 before the District Judge, Bhiwani, who dismissed the appeal on 26.04.2007 (Annexure A2). The Lower Appellate Court incorporated the relief of possession both in the judgment and the decree. The said judgment and decree was upheld by this Court also. The present petitioner filed the objections in the execution application, taking the plea that she was in possession of the premises since January, 1998 as

month. It was claimed that she was having ration card, telephone connection and her name figured in the voters list. The Municipal record also showed that she was a tenant in the house.

It was, accordingly, held that the decree-holder could only be given symbolic possession and there was a relationship of landlord-tenant and the rent had already been paid till 31.07.2013. The objections were opposed by the decree-holder on the ground that the suit was filed in the year 1999 and the objector was never in possession of the house and was put in possession to defeat the right of the decree-holder. All the documents showed that after filing the main civil suit, the objector had been put in possession and therefore, prayed for possession.

The Executing Court, accordingly, placing reliance upon the judgment of this Court in **Pohlo Ram Sharma & others Vs. Narinder Singh Randhawa & others 2008 (1) RCR (Civil) 442** held that if frivolous objections are raised, the Court is not supposed to frame issues and they can be summarily rejected. Accordingly, it was noticed that the suit was filed on 09.01.1999 and the claim was that she had been a tenant since January, 1998 was not supported by any document and the principle of *lis pendence* applied and accordingly, the objections had been dismissed, as noticed.

The arguments of counsel for the petitioner are attractive, at the first blush, but in the present case, once the issue is examined in a closer perspective, it reveals that there is no substance in the arguments which have been raised regarding the framing of the issues. It is the specific case of the petitioner that she was a tenant who had come into possession prior to the litigation. The Court has examined the documents placed on record and come to the conclusion that the documents pertained to the period subsequent to the litigation and therefore, it

litigation of a decree which was passed wayback a decade ago. The same was upheld in appeal on 26.04.2007 and thereafter, by this Court. The sale deed has also been executed in favour of the decree holder on 15.04.2013 and the objections were filed only on 31.08.2013, thereafter, taking the said plea. This Court in a series of judgment has held that in execution proceedings issues do not have to be framed but only a proper application of mind has to be there by the Court while deciding the objections. Reference can be made to the judgment of the this Court in **Som Parkash Vs. Santosh Rani 1997 AIR (Punjab) 130**, **Minakshi Saini Vs. Gurcharan Singh Bharmra 2002 (2) Civil Court Cases 229 (P&H)**, **M/s Sunil Auto Service Vs. Parikshant Suri and others 2011 (3) Civil Court Cases 521** and **Naresh Kumar Vs. Narinder Singh and another 2012(1) Civil Court Cases 378 (P&H)**. Rather it has been held that where the objections are prima facie frivolous, vexatious and intended to delay the execution proceedings, there is no need to frame issues.

The judgment in **Kartar Singh's** case (supra) does not support the petitioner in any manner, rather in the said case, the revision petitions filed by the objectors were dismissed. In **Baljit Singh's** case (supra), the objector had claimed that he was occupying the property in his own right and was not liable to be ejected from the premises and it was in such circumstances, this Court directed to frame issues. Similarly, in the case of **Shreenath** (supra), the tenant's right to prosecute the execution was upheld on the ground that it was to be decided by the Executing Court. In the said case, there was no dispute as to whether the person was a tenant or not, prior to the litigation, which commenced, as has been noticed by the Court below. Similarly, in **Brahmdeo Chaudhary's** case (supra), some other person was in possession by virtue of a registered sale deed and since the Executing Court did not take into consideration the same, upon instructions of the

Silverline Forum Pvt. Ltd. Vs. Rajiv Trust 1998 (3) SCC 723 a three Judges Bench of the Apex Court held that only those questions which are arising between the parties would be relevant for the adjudication and if the objector was a transferee *pendente lite*, it would not be necessary to determine the question raised by him. The relevant observations read as under:

"It is true that Rule 99 of Order 21 is not available to any person until he is dispossessed of immovable property by the decree-holder. Rule 101 stipulates that all questions "arising between the parties to a proceeding on an application under rule 97 or rule 99" shall be determined by the executing court, if such questions are "relevant to the adjudication of the application". A third party to the decree who offers resistance would thus fall within the ambit of Rule 101 if an adjudication is warranted as a consequence of the resistance or obstruction made by him to the execution of the decree. No doubt if the resistance was made by a transferee *pendente lite* of the judgment debtor, the scope of the adjudication would be shrunk to the limited question whether he is such transferee and on a finding in the affirmative regarding that point the execution court has to hold that he has no right to resist in view of the clear language contained in Rule 102. Exclusion of such a transferee from raising further contentions is based on the salutary principle adumbrated in Section 52 of the Transfer of Property Act."

In **Usha Sinha's** case (*supra*) also, the Apex Court rejected the case of the objector on the ground that any person who came into possession during the pendency of the litigation had no right to resist or obstruct the execution. Relevant observations read as under:

"18. It is thus settled law that a purchaser of suit property during the pendency of litigation has no right to resist or obstruct execution of decree passed by a competent Court. The doctrine of 'lis pendens' prohibits a party from dealing with the property which is the subject matter of suit. 'Lis pendens' itself is treated as constructive notice to a purchaser that he is bound by a decree to be entered in the pending suit. Rule 102, therefore, clarifies that there should not be resistance or obstruction by a transferee *pendente lite*. It declares that if the resistance is caused or obstruction is offered by a

transferee pendente lite of the judgment debtor, he cannot seek benefit of Rule 98 or 100 of Order XXI.”

Thus, the Court was only under an obligation to apply its mind while deciding the objections and it was not necessary, as such, to frame issues when an opportunity only had rightly been given. It is relevant to mention that initially, while granting stay, the argument raised by counsel for the petitioner was that the decree was limited only to the execution of the sale deed and that the decree-holder would have to bring a fresh cause of action for recovery of possession or registration of the sale deed.

As noticed the Lower Appellate Court's order has also been, now, placed on record, to show that what had been by mistake left out in the decree of the Trial Court, though the relief of possession had been granted in the judgment concerned, has further been rectified by the Lower Appellate court in which, it has been directed that possession has also to be given. In such circumstances, the submission made by the counsel for the petitioner is without any basis since an effective opportunity has been given to the petitioner to demonstrate as to whether she had any independent right vide which she was holding possession of the property prior to the commencement of the litigation and on account of failure to show that the right was prior to the litigation being initiated, the Trial Court has rightly rejected the objections.

Accordingly, this Court is of the opinion that there is no scope for interference with the well reasoned order passed by the Courts below in the revisional and supervisory jurisdiction of this Court. Consequently, the present revision petition stands dismissed.

07.01.2015
sailesh

(G.S.SANDHAWALIA)
JUDGE