

**THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No. 5760 of 2014 (O&M)
Date of decision: March 3, 2015

National Flour Mills Pvt. Ltd. and another

...Petitioners

Versus

Sanjiv Kumar and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

1. **Whether Reporters of local papers may be allowed to see the judgment ? Yes**
2. **To be referred to the Reporters or not ? Yes**
3. **Whether the judgment should be reported in the Digest? Yes**

Present: Mr. Kanwardeep Singh, Advocate,
for the petitioners.

Mr. CB Goel, Advocate,
for the respondents.

K. KANNAN, J. (Oral)

1. There is simply no time to be wasted for a litigant who attempts to browbeat a decree holder and endlessly litigate for the points which are wholly covered and leave no doubt for adjudication. In simpler expression, a decree for ejectment passed against the tenants is not allowed to be executed at the instance of the recalcitrant tenants who believe that by taking a purchase from the owner after taking a sub-lease from the head tenant, they will be entitled to fend off a lawful decree. They have gone thorough a whole process of contest upto the Supreme Court and as is proverbial, a fresh round has begun at the stage of the execution. At the stage of the execution by the decree-holder, the judgment-debtors have filed a fanciful application under Order 21 Rule 36 and Order 21 Rule 101 CPC that their possession cannot be disturbed since they have already obtained

partition order and that share in the property must be predicated and allowed to be retained by them. According to them, all the sheds have been put up by them and no part of it was subject of lease by the decree-holder/landlord.

2. The reference Order 21 Rule 36 CPC is meaningless, for, it can be invoked only by a person who is not a party to the decree or when the decree itself recognizes the right of the judgment debtor to continue in possession when only symbolic possession is given. This cannot be invoked by a tenant in an ejectment action against whom an order of ejectment is already made. The reference to inviting adjudication under Rule 101 CPC is equally untenable and meaningless, if it is brought by the judgment-debtors themselves. The contention before me is that the amendment in CPC in 1976 has brought a new dispensation of finalization of adjudication of title by the executing court itself and not through an independent proceedings. This amendment that provided an adjudication at the stage of execution and giving the order an effect of decree is for the persons who were not party to the action. The legislative change was brought about to quell motivated actions of persons who secured decree against inconsequential persons and possession was forced against a non-party by taking advantage of a decree granted by a court. A situation that existed prior to the amendment was that delivery effected could only be challenged by means of a suit if a third party is affected by the decree and who is dispossessed. The new dispensation was to ensure that precious resources and time were not lost by duplicating proceedings through suit and allowing for third party adjudication to be brought in the execution stage itself. This does not mean to exclude an operation of Section 47 CPC.

Section 47 of the CPC is the only resort which a tenant could have for

adjudging any right between the decree-holder and himself as the judgment-debtor. All matters in execution shall be decided only on an application under Section 47 CPC and could not be brought even by means of a separate suit. What cannot be brought by means of a separate suit and excluded by Section 47 CPC cannot be brought about in a specious way by resort to Rule 101 CPC. The plea is that the expression 'any person' found under Rule 101 CPC must include a judgment debtor. This contention makes violence to the intendment of the legislation that provided for full-fledged adjudication under Order 21 Rules 97 to 100 to 3rd parties and to give effect to an order as if it is a decree. It can not provide a scope to a judgment debtor to open a new line of defence. That is precisely the attempt that is made before me.

3. If there was an obstruction caused by the tenants before the executing court, there was no way by which the executing court could have lent its space for such adjudication to be regarded as adjudication under Rule 101 CPC. An argument by the learned counsel for the tenants is that the Rent Controller has no power to adjudge on title and that will become possible only at the stage of execution when the decree is brought before a civil court. The principle that trappings of the Rent Controller as *persona designata* will not empower him to decide title, cannot be applied to the order put in execution. This is also an untenable argument to make, since the restriction of decision and title is not merely for a Rent Controller but it shall also be for an executing court, if the matter brought before it is between the decree-holder and the judgment-debtor. An executing court cannot bring up issue of title for adjudication by resort to Rule 101 CPC, if the proceedings are between the parties to the suit. The principle at play in this is different: an executing court cannot go beyond the terms what is

declared by the decree. If there is a decree for ejectment, the executing court will not hold that there was some issue which was left undecided or which could have not been decided by the trial court and, therefore, he will decide, under the garb of exercise of power under Rule 101. It will mean an endless adjudicatory process if we will cede to executing court powers which was simply not contemplated under the Code, the exercise which the judgment debtors would want the executing court to be burdened with.

4. Before much arguments got underway, I put the offer made by the judgment debtors to the decree-holder that after all, they are purchasers from the full owner and they should be allowed to retain the possession of the property of what they are entitled to and the decree-holder may specify the property of what he wants. The counsel appearing for the decree-holder wants nothing of these seemingly charitable overtures and he wants what he has secured through the decree against the petitioners who admittedly took the property on lease; in my view, justifiably so. There shall be no impediment or obstruction which the judgment debtors could cause. They shall make way by removing themselves lock stock and barrel before the ink dries. Further obstruction must be taken as a serious disobedience of the order and such obstruction, if it is caused before the bailiff, I authorize the decree-holder to secure police help and cause their arrest in the place where they cause such obstruction. The Supreme Court had an occasion to state in Shub Karan Bubna @ Shub Karan Prasad Bubna Versus Sita Saran Bubna and others (2009) 9 SCC 689:-

“A litigant coming to court seeking relief is not interested in receiving a paper decree, when he succeeds in establishing his case. What he wants is relief. If it is a suit for money, he wants

the money. If it is a suit for property, he wants the property. He naturally wonders why when he files a suit for recovery of money, he should first engage a lawyer and obtain a decree and then again engage a lawyer and execute the decree. Similarly, when he files a suit for partition, he wonders why he has to first secure a preliminary decree, then file an application and obtain a final decree and then file an execution to get the actual relief. The common-sensical query is: why not a continuous process? The litigant is perplexed as to why when a money decree is passed, the court does not fix the date for payment and if it is not paid, proceed with the execution; when a preliminary decree is passed in a partition suit, why the court does not forthwith fix a date for appointment of a Commissioner for division and make a final decree and deliver actual possession of his separated share. Why is it necessary for him to remind the court and approach the court at different stages?"

The travail of the decree-holder begins only at the execution stage there must be a seamless procedure casting an obligation to the court passing the decree to give effect to it. The execution process itself has now become an unwelcome denouement and a much a more painful exercise. This situation cannot be allowed to continue. I find the revision is a vexatious attempt to prolong proceedings. The judgment debtors have allowed themselves a fanciful trip to the district court by means of appeal, while there could have been no such appeal for an order passed between the parties in execution must only be construed as an order passed under Section 47 CPC, which is not an appealable order. What is brought before

me is the order by the appellate court which is not competent. Untenability of the revision is sourced to two factors: the order passed by the District Judge was in exercise of power which did not vest in him to even entertain the appeal. The second factor is that the obstruction caused in execution itself is wholly without merit that permeates all through.

5. The revision is dismissed with costs of Rs. 25,000/- against the petitioners.

March 3, 2015
prem

(K.KANNAN)
JUDGE