

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

ESA 28 of 2014

Date of Decision: April 21, 2015

Gurmail Singh

.....Petitioner

Vs.

Mukhtiar Singh and ors.

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.S.K. Singla, Advocate
for the petitioner.

Mr. D.S. Malwai, Advocate
for the respondents No. 1(i) and 1(ii).

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M.M.S. BEDI, J. (ORAL)

The petitioner is an objector in a suit for specific performance decreed in favour of respondent No.1 against respondent No.2 (defendant). The petitioner resisted the execution of decree for possession in favour of respondent No.1 on the ground that he had attained ownership of the property in dispute on the basis of an agreement of sale dated march 4, 1994 and that possession had also been delivered to him on March 4, 1994 pursuant to the agreement of sale. The execution application filed by

respondent No.1 was dismissed by the Executing Court and the objections filed by the petitioner were allowed. An appeal filed by the decree holder before District Judge, Sangrur has been allowed vide order dated April 1, 2014 observing that respondent No.1 decree holder had not been granted fair opportunity to rebut the averments and the evidence of the objector/petitioner.

Vide impugned order, without going into the merits of the case, the matter has been remanded to the Executing Court with a direction to decide the matter afresh on merits after affording two effective opportunities to the decree holder respondent No.1 to lead the evidence in accordance with law. The decree holder has been burdened with cost of Rs.1000/- to be deposited with Sub Divisional Legal Service Authority, Malerkotla. A direction has also been given that the matter would be decided expeditiously within a period of four months from the date of appearance of the parties before the Executing Court.

Learned counsel for the petitioner has contended that the objections of the petitioner had rightly been allowed by the Executing Court. The lower Appellate Court had even appreciated the fact that 10 opportunities had been given to respondent No.1 to produce his evidence to rebut the evidence led by the petitioner-objector on issues No.1 to 5 but no evidence was produced on issue No.5 by the decree holder- respondent No.1. He has drawn the attention of this Court to the various interim orders

passed by the Executing Court indicating that a number of opportunities had been given to the decree holder- respondent no.1 to produce the evidence.

I have heard learned counsel for the petitioner as well as counsel for the decree holder/ respondent No.1 and I am of the opinion that the order passed by the lower Appellate Court is in consonance with the rules of natural justice. A decree holder to be deprived of the fruits of a decree in his favour on the basis of the objections of the petitioner, certainly deserves a fair opportunity to rebut the objections filed by the objector. It is settled principle of law that rules of procedure are handmade of justice. No doubt, the respondent- decree holder had adopted a casual approach in producing the evidence and had been apparently negligent in contesting the objections of the petitioner which are based upon agreement of sale which prima facie does not confer title in accordance with law. The fact whether the objector has got any right in the suit property on the basis of agreement of sale by delivery of possession requires to be decided by giving at least one opportunity to the decree holder. Counsel for the decree holder- respondent No.1 informs that during the pendency of this revision petition, the evidence has already been led.

I do not find any infirmity in the order passed by the lower Appellate Court but I am of the opinion that for the unnecessary delay and harassment caused by the decree holder on account of non-production of the evidence at opportune time, the objector deserves to be compensated with adequate cost. Cost of Rs.1000/- awarded by the lower Appellate Court

appears to be inadequate taking into consideration the controversy involved. The order dated April 1, 2014 is upheld, however, it is ordered that the petitioner would be entitled to cost of Rs.15000/- which will be paid by respondent No.1 to the objector on next date of hearing. It is further directed that the Executing Court will decide the objections taking into consideration the evidence of both the parties on the relevant issues within a period of two months after the receipt of certified copy of the order.

Disposed of .

Nothing said in this order will prejudice the rights of the objector/ petitioner in civil suit filed by him for specific performance of the agreement of sale.

April 21, 2015
sanjay

(M.M.S.BEDI)
JUDGE