

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 2650 of 2016(O&M)
Date of decision : April , 2016

Ashish Kumar and others

..... Petitioners

Versus

Om Parkash (deceased) through L.Rs and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Alok Jain , Advocate
for the petitioners.

Mr. C. M. Munjal, Advocate
for the respondents-caveators.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J.

The petitioners are aggrieved of the order dated 25.3.2016 passed by Additional District Judge, Sri Muktsar Sahib whereby the objections filed on behalf of the contesting respondents seeking restoration of the possession of Shop No.1 after delivery of possession on 21.7.2015 in execution of warrants of possession and for demolition of Wall constructed thereafter to demarcate and bifurcate 2 shops has been allowed.

Mr. Alok Jain, learned counsel appearing on behalf of the petitioners submits that Amar Nath had four sons. In

order to settle the dispute between the parties with regard to the estate of Amar Nath, the matter was referred to the arbitrator. The arbitrators passed the award Annexure P-2 dated 2.12.1996 and gave the respective share to the parties. The award attained finality. As per the award, the petitioner sought execution of the same and has delivered the possession of ½ share in shop No.1 and full share in shop No.2 in terms of the award whereas the objector filed objections on 10.8.2015 which were allowed.

He further submits that there is no provision in law either under Section 47 or under Order 21 Rule 97 (1) & (2), , 98,99,100,101 CPC for invoking the jurisdiction of the executing court for rectifying the mistake that had occurred on the part of the court by correcting the same order to put back the objector Akshay Kumar etc. in possession of shop No.1 by demolishing the Wall. In support of his contentions, he has relied upon the judgments in **Shreenath and another Vs. Rajesh and others 1998 4 SCC 543, K. K. VelusamyVs.N. Palanisamy (2011) 11 SCC 275 and State of U.P.Vs. Harendra Arora and another (2001) 6 SCC 392.**

He further submits that there has been gross mis-interpretation of the award as it has ex facie been held by the arbitrator that whatever has been given to Dr. Om Parkash would include ½ share of which Som Parkash predecessor-in-interest of the petitioner and it has been meant for benefit of heirs mentioned above. Om Parkash will continue to discharge the customary and social obligation in respect of these heirs. When Ashish Kumar would attain majority he would be entitled to claim his half share out

of the properties now given to Om Parkash. In this regard, he has drawn attention of this Court to operative part of the award which reads thus:-

“In making this distribution, whatever has been given to Dr. Om Parkash Verma included the half share of late Som Parkash and is meant for the benefit of his heirs mentioned above. Dr. Om parkashVerma will continue to discharge the customary and social obligation in respect of these heirs. When Ashish Kumar attains majority he will be entitled to claim his half share out of the properties now given to Dr. Om ParkashVerma.

1. *Residential House & Shop in street No.2, Malout*

This is double storey house constructed on a plot of 50'x80' and has 7 no.of shops facing the main Bazar. Considering that Dr. Om Parkash being the eldest son of Late Dr. Amar Nath has been discharging the functions of the head of the family ever since the demise of Dr. Amar nath and has been carrying on his profession from the same premiss. It was decided that he should not be dislocated from the premise and he is given the large shop measuring 21' x 17' shown as shop No.1 in the sit plan attached. It is also decided that he will have the entire constructed portion of the residential house except 'nohra' portion marked in green measuring approximately 1100 sq.ft. The ground floor portion given to Dr. Om Parkash in marked in red in site plan attached. Dr. Om ParkashVerma is also given 7 rooms on the first floor. Since shop No.1 presently being run under the name and style of Vandana Sales Corporation was started and run by late Shri SomParkashVerma and is currently being run and managed by Suresh Kumar son of Dr. Om

Parkash Verma, on Ashish Kumar's attaining majority, the shop No.2-stock-in-trade and its assets will go to him as part of his share in the estate of Amar Nath Verma stock-in-trade and assets of Vandana Sales Corporation have been left out of the reckoning for the purpose of this distribution."

In pursuance to the aforementioned award, an execution application was filed and possession of the property was taken away back in July/August, 2015. No objections were filed at the instance of the objectors at the time of execution of the award. It is only thereafter the objections have been filed and decided against the petitioners, thus, urges this court for dismissal of the order issuing warrants of possession on 8.4.2016 now for 22.4.2016 and as per order dated 25.3.2016.

Mr. C. M. Munjal, learned counsel appearing behalf of the respondents-caveators submits that the executing court had committed a mistake in accepting the issue of warrant of possession. Handing over the possession to the petitioner being successor-in-interest of Som Parkash and realizing its mistake, an application was filed for correcting the aforementioned mistake and the trial court after noticing detail facts rectified the mistake.

He further submits that the executing court is well within its power to correct the mistake and recall the warrant of possession, in case been issued owing to an error or any inadvertence, much less mis-interpretation of decree. The shop No.1 was used by Om Parkash being predecessor-in-interest, whereas in

shop No.2 business under the name and style of Vandana Sales Corporation was run and in the award shop No.1 has erroneously crept in whereas it should have been Shop No.2.

Mr. AlokJain, on the other hand does not dispute this fact and submits that it is shop No.2 which has to be read and not shop No.1.

I have heard learned counsel for the parties and appraised the paper book.

It would be apt to reproduce operative part of the order whereby executing court after noticing the observations, gave the following observations.

“So, the entire reading of the award shows that the share of Om Parkash include the share of Ashish Kumar. But with regard to the shop No.1, it was specifically made clear that the same was exclusively left to Om Parkash as he is discharging the obligations as head of the family and is running the shop. So he should not be dislocated from the shop No.1. If the findings of the Arbitrator would have been to give half share out of the shop No.1 to Ashish Kumar etc. then they should not have referred it that the shop No.1 is exclusively left to Om Parkash Verma for the reason given therein and the shop No.2 would not have been given to Ashish Kumar rather in view of the general observation that the share of Om Parkash includes the share of Ashish Kumar, then both the shops No.1 and 2 would have simply fallen to the share of Om Parkash and the same would have meant that Ashish Kumar has half share out of those shops. But in the Award it has not been done rather they

have specifically provided the shop No.1 exclusively to Om Parkash and shop No.2 exclusively given to Ashish Kumar. Except that whatever share Om Parkash has got includes half share of Ashish Kumar. So, the shop No.1 was exclusively given to Om Parkash in the Award and delivery of possession of ½ share of shop No.1 to Ashish Kumar by issuance of warrant of possession is against the spirit of award and has been mistakenly done by the Court. This Court has misread the Award and has not correctly interpreted the award at the time of issuance of warrant of possession. As such, this mistake has occurred on the part of the Court and the mistake is liable to be corrected. As such, the objectors Akshay Kumar etc. are required to be put in possession of shop No.1 by demolishing the wall which has been constructed in the shop No.1 in order to partition it.

As regards the claim of shop No.2 is concerned, the shop No.2 has been exclusively given to Ashish Kumar etc. and warrant of possession has been rightly issued in favour of Ashish Kumar etc. and possession has rightly been given to Ashish Kumar etc. and there is no force in the objections as regards the possession of shop No.2 is concerned.”

Thus, there is no dispute to the fact that Shop No.2 has been exclusively given to the petitioner Ashish Kumar. However, viz-a-viz Shop No.1 it has been found that major portion has been given. It has been noticed that as per the award the double storey house constructed on plot of 50' x 80'. Considering the fact that Om Parkash being the eldest son of Amar Nath was discharging the functions of the head of the family ever since the demise of Amar Nath and had been carrying on his profession from the same

premises and the arbitrator decided that he should not be dislocated from the premises and given large shop measuring 21' x 17' known as shop No.1 in the site plan attached.

As per the award it has been decided that he will have the entire constructed portion of the residential house except 'nohra' portion marked in green measuring approximately 1100 sq.ft. The ground floor portion was given to Om Parkash Verma and also 7 rooms on first floor marked in red in site plan attached and shop No.2 being run under the name and style of Vandana Sale Corporation which was started and run by Som Parkash Verma and now being run and managed by Suresh Kumar son of Om Parkash Verma. On petitioner's attaining majority, shop No.2, stock-in-trade and its assets will go to him as part of his share in the estate of Amar Nath stock-in-trade and trade and assets of Vandana Sales Corporation have been left out of the reckoning for the purpose of distribution. The petitioner has mis-interpreted the first part of the award whereby the share of Om Parkash Verma includes $\frac{1}{2}$ share of Som Parkash. If this analogy is to be adopted Om Parkash Verma would also have a share in shop No. 2 i.e. as per sum and substance of the award is extracted.

In my view, the trial court has rightly exercised discretion for correcting the mistake on its part. The objections have rightly been accepted.

There is no dispute to the ratio decidendi culled out in the aforementioned case but the fact remains that the executing court has all the powers to correct its mistakes as once it

has power to execute the decree it can always recall the order on being pointed out the defect in the interpretation of the order/judgment and decree sought to be executed.

I do not find any illegality and perversity in the impugned order and the same cannot be said to have been passed without jurisdiction.

The revision petition is devoid of merits.
Accordingly the same is dismissed.

(AMIT RAWAL)
JUDGE

April , 2016
archana