

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.4658 of 2016 (O&M)

Date of Decision: July 23, 2016

Arun Kalia and Others

---Petitioners

versus

Krishan Gopal and Others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Arun Jain, Senior Advocate with
Mr. Munish Gupta, Advocate for the petitioners.

Rekha Mittal, J.

The present petition has been directed against order dated 08.07.2016 (Annexure P-14) whereby objections filed by the petitioners have been dismissed by the executing Court.

Arvinder Singh and others respondents No.2 to 4/plaintiffs filed a suit for specific performance of agreement to sell dated 08.10.2001 against Krishan Gopal respondent No.1/Judgment Debtor (for short 'JD') that was decided in favour of the plaintiffs. After fighting a protracted legal battle up to the High Court whereas an appeal by way of Special Leave to Appeal is pending before Hon'ble the Supreme Court, the decree holders filed an execution petition praying for execution of sale deed and delivery of possession of the decreetal property.

The petitioners preferred an application/objections under Section 47, Order 21 Rule 97 read with Section 151 of the Code of Civil Procedure, 1908 (for brevity 'CPC'), that came to be dismissed vide order impugned.

Counsel for the petitioners on a pointed query raised by the Court has fairly informed that as the petitioners are the transferees *pendente lite*, they preferred objections in that capacity, therefore, the only remedy available to them is to challenge the impugned order by way of revision before this Court as an appeal at their behest would not be maintainable. For this purpose, he has referred to judgment of this Court Dinesh Kumar vs. Baldev Raj and Another, 2014 (4) ICC 486.

Counsel for the petitioner would submit that the suit for possession by way of specific performance of agreement was instituted by the decree holders on 18.04.2002 and the sale deed qua the suit property was executed in their favour by Sh. Krishan Gopal (JD) on 29.05.2002.

To assail the impugned order, the sole submission made by counsel is that as the judgment and decree passed in favour of the decree holders is the result of collusion between the decree holders and the JD, the sale of suit land in favour of the petitioners is not hit by the principle of *lis pendens*. Further dilating, it is argued that as collusion is a question of fact to be decided on the basis of evidence, the impugned order may be set aside with a direction to the Executing Court to frame issues, permit the parties to

adduce evidence in support of their contesting claims and thereafter to decide the objections on merits.

I have heard counsel for the petitioners and perused the records particularly the order impugned.

Before advertng to the contentions raised by learned counsel, it is appropriate to extract paras 6 and 7 from the impugned order, reads thus:-

“6. In this regard, I am of the opinion that the Civil Suit between the DH and the JD was instituted on 20.04.2002 and the same was decided by the Court on 21.10.2008. Perusal of that judgment of the Court dated 21.10.2008 shows that the defendant in that case had raised the objection that Arun Kalia (applicant No.1 in the present case) had filed an application for correction of Khasra Girdawari, which was allowed on 22.05.2002 and in the said case, the application of the plaintiffs for becoming a party was dismissed. Hence, it becomes clear that the factum of the possession of applicant No.1 over the suit land was not concealed between the parties for over six years. When the suit was disposed of against the JD by an order dated 01.12.2011 passed by Shri J.S. Bhinder the then Ld. Addl. District Judge, Hoshiarpur. Not satisfied by this judgment of the Court, the JD filed an appeal before the Hon'ble Punjab and Haryana High Court, which was dismissed by an order of the Hon'ble High Court dated 29.03.2012 in RSA No.1219 of 2012. Thereafter, the JD filed an appeal against this order of the Hon'ble High Court before the Supreme Court of India which is still pending for final adjudication.

7. So, from the record it transpires that the litigation was extensively contested between the parties and the same has been taken to the highest forum i.e. the Apex Court of the country. Moreover, the factum of the order passed by the Tehsildar dated 22.05.2002, in favour of applicat No.1 was disclosed before the Trial Court as is evident from para 22 of the judgment of the Trial Court dated 21.10.2008. Hence, in no circumstances, it can be presumed that there was only collusion between the DH and the JD as has been pleaded by the applicants. The suit and the subsequent

appeals were duly contested between the parties and so there does not appear to be any fraud played with the Court in obtaining the said judgment and decree.”

Counsel for the petitioners has not disputed correctness of the facts recorded in para 6 of the order. The JD contested the suit that remained pending before the trial Court for more than six years. The appeal preferred by him did not find favour with the first Appellate Court. He carried the matter further in appeal before the High Court by filing RSA No.1219 of 2012 that was dismissed on 29.03.2012. The things did not rest here. Further challenge has been laid before Hon'ble the Supreme Court and the appeal is statedly pending. The mere fact that the petitioners have raised a plea that the suit is the result of collusion between the decree holders and JD is not sufficient to accept the plea of framing issue(s), permitting the parties to adduce evidence and thereafter, to decide the objections.

There cannot be any quarrel with the settled position in law that the executing Court is not obligated to frame issues in each and every case to decide the objections. In absence of the objectors showing a *prima facie* case in their favour that the proceedings initiated at the instance of decree holders are the result of collusion between parties to the lis, there is no merit in contention of the petitioners that the impugned order is liable to be set aside for decision of objections afresh as prayed for. On the contrary, if plea of the petitioners is accepted, it would amount to subjecting the decree holders to another bout of litigation at the cost of unforeseen misery,

irreparable loss and wastage of precious time of the Court on the mere asking of the objectors. In view of the above, I find myself unable to subscribe to the contentions raised by the petitioners.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

July 23, 2016
'D.Gulati'

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no