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

Civil Revision No.1193 of 2017

Date of decision: 17.02.2017

Season Bhandari and another

...Petitioners

Versus

Visakha Singh and another

...Respondents

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

Present: Mr. Abhinav Gupta, Advocate for the petitioners.

G.S.SANDHAWALIA, J. (Oral)

The present revision petition under Article 227 of the Constitution of India is directed against the order dated 9.2.2017 passed by the Executing Court, Jalandhar whereby the objections filed by the petitioners who are children of Rajinder Kumar were dismissed.

The reasoning given by the Executing Court is on account of the fact that the statement had been given on 3.12.2012 (Annexure P/3) by the attorney of judgment debtor no.1, who is their father that they would vacate the demise shop by 1.12.2015 and payment of rent would also be made upto that date. In execution the judgment debtors and the legal representatives were reluctant to vacate the demised shop and accordingly warrants of possession were issued regarding the shop in question by referring the matter to the District and Sessions Judge, Jalandhar.

Counsel for the petitioners has vehemently submitted that the petitioners are the children of Sunita, who had expired on 25.5.2016 and she was a co-tenant along with Chaman Lal Bhandari-proforma respondent before this Court and she had never made any statement as such to vacate

the shop in question and neither she had put in appearance before the Rent Controller, Jalandhar. Therefore, it is submitted that the present petitioners are not bound to abide by the undertaking given on the earlier occasion and the statement made before the Lok Adalat would not constitute an award as per Rule 17 of the National Legal Services Authority Notification (Lok Adalats) Regulation, 2009 since the petition was withdrawn

The present case is a classic case where one family member continues to remain behind and provide shield to others and try to retain the possession of the property for which main head of the family Chaman Lal Bhandari had given undertaking in Court through attorney, namely, Rajinder Kumar, father of the present petitioners to vacate the shop in question by 1.12.2015. Despite his undertaking an attempt is made to thwart the compromise as such which was arrived at between the tenants and the landlord and to frustrate the right of the landlord to get the possession of the property by filing frivolous objections. It is to be noticed that the eviction petition was filed against Chaman Lal Bhandari and Sunita, who was the mother of the present petitioners. On 3.12.2012 (Annexure P/2) before Rent Controller, Jalandhar, Rajinder Kumar Bhandari, who was son of Chaman Lal Bhandari and being husband of Sunita and father of the present petitioners had suffered a statement that Chaman Lal was his father. He was tenant in the shop in question and an old aged person and therefore unable to come personally. He had executed special power of attorney in his favour to suffer a statement on his behalf. Therefore, an undertaking was given by the said Rajinder Kumar Bhandari to the effect that the matter had been compromised and he would vacate the

shop in question on 1.12.2015 and they would pay future rent also in the ejectment petition filed by respondent no.1 on the ground of non payment of rent and bonafide personal necessity. On the basis of the said undertaking, the landlord also did not pursue the ejectment petition and gave a statement that ejectment petition may be decided accordingly. Accordingly, the matter was referred to the Lok Adalat and on 15.12.2012 in view of the compromise arrived at between the parties, the parties were held bound by their respective statements made on 3.12.2012 and the ejectment petition was dismissed as withdrawn.

On account of non compliance of undertaking, execution was filed on 11.12.2015 in which an application was filed by Sunita, mother of the present petitioners dated 25.2.2016 (Annexure P/6) for recalling of order dated 18.2.2016 whereby warrants of possession had been issued in favour of the landlord.

By reply dated 3.3.2016 (Annexure P/7) to the said application, it was categorically averred that Chaman Lal Bhandari was admittedly an old man of age of 80 years and the said Sunita was suffering from cancer and kidney problem. Rajinder Kumar Bhandari was running entire business in the shop in dispute and thus he had appeared in Court as a power of attorney to complete all the formalities and giving effect to the compromise. On account of death of Sunita on 25.5.2016, an application was filed for impleadment as such by the present petitioners dated 17.8.2016 (Annexure P/8). The application was allowed on 3.12.2016 to the extent of impleadment. Regarding the withdrawal of warrants of possession, the same was declined by relying upon the judgment of the Apex Court in

H.C.Pandey Vs. Sri G.C. Paul 1989 AIR (SC) 1470 vide order dated

3.12.2016 (Annexure P/9) by holding as under:-

“When the legal heirs succeed on behalf of joint tenant, they can only constitute a single unit along with the other joint tenant. In the present case the JD No.1 is standing in this case along with legal heirs of JD No.2 and non recording of statement of JD No.2 at relevant time has no effect as this Court is not to go beyond the decree. Furthermore, this Court has to look into the intent of the parties from the statement dated 03.12.2012 and the order thereof passed by the Presiding Officer, Lok Adalat, Jalandhar. The law supplied by ld. Counsel for applicant/objector is not applicable. Therefore, the present application stands declined being without merits.

An application for grant of police help has already been filed by decree holder. On the other hand a reply to the same has been filed by LR of JD No.2. The said application stands allowed subject to recording of statement of decree holder on the next date of hearing and warrants of possession shall be issued accordingly on that date. The said application also stands disposed of. Now to come up on 19.12.2016 for recording statement of decree holder with regard to police help.”

Thereafter, the second set of objections were filed before the Executing Court by the present petitioners which had now been dismissed by the impugned order dated 9.2.2017.

The argument thus raised that Sunita as such had never given any undertaking and therefore her legal representatives are not liable to be evicted and they are not bound by undertaking is thus liable to be rejected out rightly keeping in view the close relationship interse the parties and the fact that the grand father had consented to vacate the shop in question who

has now been arrayed as proforma respondent. The petitioners were well aware with regard to the undertaking given by their father on behalf of their grand father and would be bound by the statement as such and they would not have any such independent right to challenge the execution proceedings on the ground that their mother had not been as such heard at the time when the compromise was effected. It was a family arrangement done by the head of the family and their father himself being attorney of proforma respondent had given an undertaking to vacate the premises. The said statement reads as under:-

Statement of Rajinder Kumar Bhandari, attorney Chaman Lal Bhandari R/o EO 264, Peer Bodlan Bazar Jalandhar on SA

Stated that Chaman Lal is my father. He is tenant in the shop in question. He is old aged person and unable to come personally. He executed special power of attorney in his favour to suffer a statement on his behalf. Mr. Chaman Lal has compromised the dispute with the petitioner. He shall vacate the shop on 1.12.2015, he shall also pay the future rent in time till 01.12.2015 against proper receipt. The original power of attorney Ex. R1. Viskha Singh requires the shop and his property for his personal use and occupation. The ejectment petition be decided accordingly.

RO&AC

(Amrish Kumar)
RC/03.12.12.”

In such circumstances reliance as such placed upon the judgment in Inderjit Kaur and others Vs. Ranbir Singh 2014(1) PLR 317 would be of no help to the counsel for the petitioners since the argument had been raised in that case that once the petition had been dismissed as withdrawn, the decree could not be executed as such. In the present case the ejectment application was withdrawn only on account of

the fact that an undertaking was given that compromise had been arrived at interse the parties and the shop in question will be vacated after a period of three years on payment of rent. Once the undertaking had not complied with by the tenants who belong to one family, the Executing Court was bound to get delivered the possession of the shop in question in view of the compromise.

In such circumstances, judgment of the Apex Court in **Shrimati Kaushalya Devi and others Vs. Shri K.L.Bansal (1969) 1 SCC 59** would also be of no help to the petitioners. This Court will not be a party to a fraudulent act of the family members in not abiding by the undertaking given by the father of the petitioners. Accordingly, the present judgment would not be applicable to the facts of the present case as it did not belong to any undertaking given by immediate family members.

In such circumstances, this Court is of the opinion that there is no infirmity or illegality in the impugned order dated 9.2.2017 passed by the Executing Court, Jalandhar which would warrant interference by this Court.

Accordingly, the present revision petition is dismissed.

February 17, 2017
Pka

(G.S.SANDHAWALIA)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No