

CR No. 1249 of 2017
DECIDED ON: MARCH 01, 2017

.....PETITIONER

....RESPONDENTS

Present: Mr. Jai Bhagwan, Advocate
for the petitioner.

Challenge in this revision petition preferred under Article 227 of the Constitution of India is to the order dated December 12, 2016 (Annexure P-3), passed by learned Additional Civil Judge (Sr. Division), Phagwara, whereby, objections filed by the petitioner in execution proceedings; have been dismissed.

The facts giving rise to the instant revision petition are that respondent-Kashmiri Lal filed a suit for mandatory injunction directing the defendants No.2 to 5 to remove the machinery and other goods from the demised premises and to hand over the vacant possession thereof, as well as for mandatory injunction directing defendants No.2 to 3 to discontinue illegally obtained industrial connection in the said residential building. The said suit was decreed vide judgment and decree dated October 16, 2010 passed by learned Civil Judge (Jr. Division), Phagwara. Aggrieved against the said judgment and decree, respondents No.4 and 5 preferred an appeal, which was entrusted to the learned Additional District Judge, Kapurthala. Ultimately said

appeal was dismissed vide judgment and decree dated December 07, 2012. For the implementation of the afore-said judgment and decree, respondent No.1 filed an execution application before the Executing Court against respondents No.2 to 5, in which, warrants of possession were issued for delivery of vacant possession of the suit property after removal of machinery and other goods like raw material, finished, unfinished, other paraphernalia and personal belonging etc. from the premises comprising factory and residential portion from the building.

The objection petition was preferred on the ground that petitioner was not arrayed as party in the suit or appeal in which the decree was passed despite the fact that decree holder was well aware that objector-petitioner is in occupation and possession of the premises in dispute, the possession of which is being sought by him from respondents No.4 and 5/Judgment debtor. In fact, the objector-petitioner has been running the factory on the ground floor of the premises under the name and style of M/s K.K. Engineer as proprietorship since April 2005 i.e. much prior to the filing of the suit and passing of decree. The said objection petition has been dismissed by the Executing Court vide impugned order dated December 12, 2016, which necessitated the filing of instant petition.

While assailing the impugned order, it has been argued with vehemence by learned counsel for the petitioner that the learned trial Court without appreciating the facts and circumstances as well as evidence available on record has wrongly dismissed the objections. As such, the impugned order is illegal and arbitrary and is liable to be set aside firstly, on the ground that the decree holder/respondent No.1 has not intentionally impleaded the petitioner-

objector as a party in the suit despite the fact that he was fully aware that petitioner-objector is in occupation and possession of the premises in dispute and was necessary and proper party in the suit. Secondly, petitioner/objector is running a factory on the ground floor of the premises in dispute under the name and style of M/s K.K. Engineer in proprietorship since April, 2005. He has also produced the documents showing the registration of the industry with Excise and Taxation Department, Phagwara. Besides it he is also the holder of PAN card issued by the Income Tax Department. He is also an income tax assessee. In fact, the relation of the petitioner with his parents namely Vijay Kalia and Meera Kalia were not cordial since February 2005. Due to the family and personal reasons, petitioner separated from them and the factory in question along-with its machinery etc. was given to him by his father. Since the petitioner is in actual physical possession of the disputed property that too, much prior to the filing of the suit and passing the decree under execution. He cannot be thrown away from the disputed property. In fact the decree in question is not binding upon him.

This Court has given an anxious thought to the afore-said submissions made by learned counsel for the petitioner but find that the objection petition is nothing but concocted and frivolous story coined by the petitioner in connivance with his parents just to delay and defeat the execution of the decree passed by Civil Judge (Jr. Division), Phagwara. The petitioner is none-else but the real son of JDs i.e. respondents No.4 and 5. The civil suit was filed on May 02, 2006 by respondent No.1-decree holder Kashmiri Lal against the parents of the petitioner-objector as well as Electricity Board which was decreed on August 16, 2010. An appeal preferred by the parents of the

petitioner-objector was also dismissed, as is evident from the judgment and decree dated December 07, 2012. The civil litigation remained pending for a period of approximately 6 years. It cannot be said that he was not aware of the pendency of the suit or that of appeal, which was filed by his parents. Moreover, there is no plea taken by the JDs in their written statement filed in the suit that they are not in possession of the disputed property or that the same is in possession of their son. At no point of time, petitioner opted to come forward as a intervenor during entire proceedings of the suit as well as that of appeal.

Moreover, petitioner has also failed to establish as to in what capacity and when he came in possession of the disputed premises. An objection petition preferred by the petitioner is nothing but a novel device adopted by him to delay and defeat the execution. Such an action on the part of the petitioner deserves to be deprecated. Learned trial Court has rightly dismissed the objection petition vide impugned order dated December 12, 2016. This Court also does not find any legal flaw in it. Thus, this Court is of the view that the same is absolutely in consonance with the evidence available on file as well settled cannons of law. As such, no interference of this Court is justified in the impugned order.

In the light of what has been discussed above, this Court does not find any merit in the instant revision petition. Therefore, it stands dismissed. Consequently, impugned order dated December 12, 2016 stands upheld.

MARCH 01, 2017
sham

(JASPAL SINGH)
JUDGE

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*