

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

**Civil Revision No.3018 of 2017 (O&M)
Decided on : 02.05.2017**

Harish Kumar

... Petitioner

Versus

Gulshan Kumar

... Respondent

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

Present : Mr. Sandeep Arora, Advocate
for the petitioner.

G.S. Sandhawalia, J. (Oral)

The present revision petition is directed against the order dated 01.07.2016 (Annexure P-4) passed by the Civil Judge (Junior Division), Jalandhar, whereby the objection petition of the appellant was dismissed and also against the order of the Additional District Judge, Jalandhar dated 09.03.2017 (Annexure P-6), whereby the appeal was dismissed.

The petitioner is none else, but the brother of the original tenant, namely, Jatinder Kumar. The execution petition was filed by the respondent-landlord on account of the eviction order passed on 16.11.2013 (Annexure P-1) on the ground of subletting, as Naresh Kumar was found to be in possession of the premises. The present petitioner has also appeared as RW-2 in order to defend the possession of Naresh Kumar, since it was found that Jatinder Kumar had gone to Australia. The appeal of the tenant Jatinder Kumar was dismissed being time-barred on 02.09.2015. He resultantly, filed Civil Revision No.7716 of 2015, which was dismissed on 20.11.2015 by holding that Naresh Kumar was in exclusive possession and control of the demised premises and nothing had been brought on record

how he was so. The tenant and his attorney had never appeared to defend his interest.

The objections filed by the present petitioner, as noticed who is none else, but brother of the original tenant, were dismissed on 01.07.2016 by rejecting the plea that he was a partner with his brother Jatinder Kumar, since 2006. Reference was made by the Executing Court that it has been held Naresh Kumar was in possession and he got the same from Jatinder Kumar. Resultantly, objections being baseless were dismissed and warrants of possession were issued.

The appeal has also been dismissed on the ground that the appellant had himself appeared as a witness in support of the earlier ejectment application on behalf of the tenant to plead that possession was with him and now he cannot turn around to say that he had a independent right of retaining the possession having failed to prove the factum of partnership. Resultantly, reliance was placed upon the judgment passed in ***'Naresh Kumar Vs. Narinder Singh and another' 2012 (1) PLR 119*** that it is not necessary to frame issues.

In ***'Rocky Tyres V Ajit Jain' 1998(2) RCR (Civil) 17 (P&H): (1998-3)120 P.L.R. 53*** the same view has been taken that where frivolous objections have been moved, it is only an attempt to delay the fruits of litigation and the issues are not to be framed. The said observations read as under:-

“It is settled principle of law that it is not incumbent upon the executing court that it must put to trial every objections which are filed in any execution proceeding, even if prima facie they appear

to be frivolous, vexatious and are only intended to delay the execution and frustrate the procedure of law or where it amounts to an abuse of the process of the court. In this court in execution **Second Appeal No. 2333 of 1996, Bhagwan Singh and Ors. v. Parkash Chand, decided on 7.11.1996.** The Court after detailed discussion and following the principles enunciated by the Hon'ble Supreme Court of India in the cases of **Babu Lal v. Raj Kumar, 1996(2) RRR 109 (SC) : J.T. (1996) 2716, Munshi Ram and Ors. v. Delhi Administration, A.I.R. 1968 Supreme Court 702, B. Gangadhar v. B.G. Rajalingam, A.I.R. 1996 S.C. 790 : 1995(3) RRR 1888 (SC)** and noticing judgments of various High Court held as under:-

"Now, for considerable period it is not only the judicial trend which has declined to interfere to protect unlawful possession or possession of ranked trespasser etc., but, on the other hand, judicial anxiety has been to give effective relief to the successful parties by expeditious execution of decrees in favour of the parties. Unnecessary prolongation of litigation sometimes results even in frustrating the decree itself, such attempt on the part of the objector to frustrate a decree is a mischief which has to be prevented by due process of law and expeditious decision of such ill-founded and frivolous objections would also be in the interest of justice and within the permissible field of jurisdiction of the execution."

"If frivolous objections of the present kind are permitted to unreasonably and unnecessarily prolong the delivery of possession to a decree holder in accordance with law, it would certainly amount to putting a premium on abuse of process of law." Thus the carnal (cardinal?) principle of law that follows is that the purpose of granting an opportunity to prove his case to an objector while entertaining objections under Section 47 read with Order 21 Rules 97 to 108 of the Civil Procedure Code does not amount to permission for abusing the process of law or court. The discretion must be exercised by the Court in such cases. Of course discretion is governed by settled judicial

principles and must be exercised within four corners of law, but such a discretion cannot be termed as a mere routine exercise of judicial discretion. Either way it should be for well founded and settled principles governing the subject."

The relationship inter se the parties has already been noticed.

It is a clear attempt to support the sub-tenant by the brother of the main tenant, who has gone abroad. Resultantly, the order passed by the Courts below are well justified and do not warrant any interference by this Court.

Accordingly, the present revision petition stands dismissed in limine.

MAY 02, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No