

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

-.-

Civil. Revision No. 5075 of 2017

Date of decision: 02.08.2017

Dalwinder Kumar

..... Petitioner

Versus

Surjit Kaur and another

.....Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Jasmeet Singh Ghumman, Advocate
for the petitioner

-.-

Rekha Mittal, J.

The present petition directs challenge against order dated 20.04.2017 (Annexure P1) passed by Civil Judge (Junior Division) Hoshiarpur in execution No. 5921 of 28/31.08.2013 titled '*Surjit Kaur v Brahmjeet Singh*' whereby application of the petitioner for restoration of possession (Annexure P2) has been dismissed.

A brief backdrop of the case is that Surjit Kaur-respondent No. 1 obtained a decree for possession against Brahmjeet Singh - respondent No. 2. She filed an application for execution of the decree and the present petitioner preferred objections under Order XXI Rule 97 of the Code of Civil Procedure (in short, the Code) claiming possession over the decretal property, therefore, the decree holder being not entitled to recover possession from the petitioner in execution of decree passed against Brahmjeet Singh. The objection petition came to be dismissed by the executing Court vide order dated 20.08.2016 (Annexure P5) with the

observations that the objections are nothing but another attempt by the judgment debtor (JD) to delay or defeat the present execution. Further held that this is in gross violation of the order of the Punjab and Haryana High Court dated 21.09.2015 in CR No. 5833 of 2015 in which judgment debtor was directed to vacate the demised premises on or before 20.01.2016. Resultantly, the Bailiff was directed to break open the locks as per rules and report on warrants of possession was awaited for 16.09.2016.

After dismissal of the objection petition, the petitioner clandestinely filed a suit for confirmation of possession by way of specific performance of the agreement to sell dated 25.08.2007 and for permanent injunction restraining the defendant from interfering in his possession over the suit land. In the said suit, neither the decree holder was arrayed as a party nor factum of a decree having been passed in favour of Surjit Kaur nor pendency of execution proceedings was disclosed. In the suit, Brahmjeet Singh - JD arrayed as defendant did not cause appearance and eventually an ex-parte order of injunction was passed in favour of the petitioner vide order dated 25.07.2016 (Annexure P4). On the basis of aforesaid order, the present application was filed by the petitioner under Section 151 of the Code seeking restoration of possession.

Counsel for the petitioner would urge that on warrants of possession issued by the Court, it was specifically mentioned that the Bailiff shall not execute the warrants, if any stay is granted by the Court regarding demised premises. It is argued with vehemence that action of the bailiff by delivering possession of the premises in question to the decree holder despite a stay order having been passed in favour of the petitioner is illegal and unwarranted, therefore, possession of the premises is liable to be

restored in favour of the petitioner.

I have heard counsel for the petitioner and perused the paper book but find that the present petition is highly mis-conceived and liable to be dismissed with compensatory costs.

Before advertng to the contentions of the petitioner, it is appropriate to recapitulate that as per the settled position in law, a litigant who approaches the Court with unclean hands and by suppressing material facts is not entitled to get any relief either in equity or in exercise of discretionary jurisdiction of the Court. The entire effort of the petitioner to stall the execution process is actuated by malice, may be, at the behest of JD, therefore, the petitioner cannot seek indulgence of this Court.

After dismissal of his objections petition, the petitioner in place of challenging order dated 20.08.2016 in an appropriate proceedings by filing an appeal before the Court, filed a suit though appears to have been filed even before the objection petition was dismissed by the executing Court.

The suit for injunction or for that matter no suit is maintainable for determination of questions relating to right, title or interest in the property in view of bar created under Order XXI Rule 101 of the Code and a relevant extract therefrom reads as follows:-

"101. **Question to be determined.**- All questions (including questions relating to right, title or interest in the property), arising between the parties to a proceeding on an application under Rule 97 or Rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this

purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions."

It is not plea of the petitioner that he was not aware of the decree passed in favour of Surjit Kaur or pendency of execution qua the said decree when he instituted the suit in May 2016. In the said suit, the petitioner neither disclosed the factum of decree nor impleaded Surjit Kaur decree holder as a party. He filed the suit on the basis of agreement to sell dated 25.08.2007 but no such agreement was pleaded by him in the objection petition as has been noticed by the Court below.

This apart, perusal of the ex-parte order of injunction would reveal that the defendant in the suit namely Brahmjeet was temporarily restrained from interfering in peaceful possession of the plaintiff (Dalwinder Kumar) or from dispossessing him from the suit property illegally, forcibly or except in due course of law till final decision of the case. There is no stay order either against Surjit Kaur much less against execution of the decree obtained by Surjit Kaur against Brahmjeet. Further more, warrants of possession were issued by the Court in favour of the decree holder and against JD Brahmjeet, therefore, possession was delivered in favour of Smt. Surjit Kaur and not in favour of Brahmjeet. Under the circumstances, stay order passed by the Court against Brahmjeet would not enure to benefit of the petitioner either to stall the process of execution or to contend that possession has been delivered in violation of an order of stay passed by a Court of competent jurisdiction. It further appears that the petitioner is fighting a proxy litigation at the behest of JD in order to frustrate the decree passed in favour of Smt. Surjit Kaur in execution whereof, Surjit Kaur has

obtained possession by resorting to legal process, in accordance with law.

Analyzed from any angle, the present petition sans merit and is accordingly

dismissed with costs of Rs.10,000.00.

(Rekha Mittal)
Judge

02.08.2017
mohan bimbura

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No