

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CR No.6444 of 2017(O&M)

Date of Decision:-25.09.2017

Vijay Malhotra.

.....Petitioner.

Versus

Shobit Aggarwal & Anr.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Vishal Sodhi, Advocate for the Petitioner.

JASWANT SINGH, J.(ORAL)

Petitioner (Objector)-Vijay Malhotra is before this Court aggrieved against the order dated 25.08.2017 passed by Civil Judge(Jr. Divn.), Batala (Executing Court) whereby his third party objections filed Under Order 21 Rules 97 to 106 CPC have been dismissed.

Learned Counsel for the petitioner (objector) has argued that the respondent-landlord had got the eviction order passed against his brother, namely, Jagmohan Malhotra by mis-stating the fact that he is the sole tenant of the demised premises and consequently, the eviction order passed against him by the Rent Controller on 25.03.2015 is bad in law, being result of fraud. It has been further argued that the judgment of eviction dated 25.3.2015 is in fact a result of collusion between respondent no.1-landlord and his brother Jagmohan Malhotra-respondent no.2. Finally

it has been argued that voluminous evidence was placed on record before

the Executing Court to prove the fact that the petitioner was running the business in the name and style of M/s Vishal Goods Transport Company, GT Road, Batala and thus, the impugned order is liable to be set aside being perverse and against law as the Executing Court was duty bound to frame issues and take evidence, before coming to any conclusion.

To support his contentions, learned Counsel for the petitioner has placed reliance upon **Shreenath Vs. Rajesh 1998(1) RCR (Rent) 454**, **Kashmiri Lal Chawla & Anr. Vs. Rohan Lal 2015(1) RCR (Rent) 162**, **Ranjit Kaur Vs. M/s MB Industries through its registered Partner Sh. Sushil Chhabra 2010(7) RCR (Civil) 2990** and **Pohlo Ram Sharma & Ors. Vs. Narinder Singh Randhawa & Ors. 2008(1) RCR (Civil) 442**.

After hearing learned Counsel for the petitioner and perusing the paper book, this Court is of the considered view that the present petition is devoid of any merit and deserves to be dismissed.

Perusal of the impugned order passed by the Executing Court would reveal that Jagmohan Malhotra (respondent no.2) had admitted before the Rent Controller that he was a tenant under respondent no.1- landlord and had contested the eviction application filed by the respondent no.1 landlord tooth and nail. The eviction application was filed on 16.7.2011 and the same was decided on 25.03.2015. A perusal of the order would also reveal that the judgment debtor i.e. Jagmohan Malhotra had admitted that Shobit Aggarwal is his landlord and that original demised premises was taken on rent in the year 1967 from Hazara Singh (original owner). Jagmohan Malhotra had also admitted the fact that after the death of Hazara Singh, his sons namely, Pritam Singh, Joginder Singh and Inder Singh were paid rent by him and ultimately from the sons of Hazara Singh,

Shobit Aggarwal-respondent no.1 had purchased the shop. Furthermore, against the eviction order dated 25.03.2015, Jagmohan Malhotra had preferred an appeal before the Appellate Authority, Gurdaspur which was dismissed and thereafter a civil revision was also preferred before this Court which was also dismissed. Meaning thereby, the relationship of landlord and tenant stood crystalized in the rent proceedings and now at the execution stage Vijay Malhotra, brother of Jagmohan Malhotra cannot question the relationship, as Executing Court cannot go behind the decree.

As far as the argument raised by learned Counsel for the petitioner that there is a collusion between the respondents is concerned, this Court is of the opinion that the said argument is also devoid of any merit. Vijay Malhotra and Jagmohan Malhotra are real brothers and the address given in the memo of parties by the petitioner in the present petition would reveal that the address is also same, however, it is mentioned that Vijay Malhotra is presently residing at Surya Nagar, Gaziabad, UP. Meaning thereby, it is apparent that the petitioner is not even located in the urban area of Batala to run the business whereas local address is same.

At this stage it is relevant to discuss the pleading of Vijay Malhotra in his objection petition, whereby he has stated that Jagmohan Malhotra and Vijay Malhotra used to jointly run the transport business from the demised premises and subsequently got separated. This fact also belies the argument of the learned Counsel for the petitioner regarding collusion because it is completely unbelievable that petitioner Vijay Malhotra was not aware about eviction application against his own brother especially when they both are running transport business in the same name which allegedly got separated later on.

In view of the above, especially when the respondent no.2 (tenant) had fought litigation against the respondent no.1-landlord upto this Court it does not appeal to the mind of the Court that there was any collusion between the respondents herein and in fact it shows that the brother of present petitioner had fought litigation tooth and nail.

It is by now settled position of law that the Executing Court is not duty bound to frame issues and take evidence in every case. The Executing Court must apply its judicious mind so as to whether the objection raised by the objector requires evidence or not, after analyzing the supporting documents. In case the Court is not satisfied, even prima facie, then it can straightway dismiss the objections.

As far as the judgments referred to above by learned Counsel for the petitioner are concerned, same are completely distinguishable on facts because in the said cases a prima facie case was made out for entertaining the third party objections, in which a serious dispute regarding the ownership or of actual physical possession was found. However, in the present case, it is rather found that the respondent no.2-tenant is trying to delay the execution proceedings by fighting a proxy litigation through his brother.

In view of foregoing discussion, finding no merit in the present revision petition the same is hereby dismissed.

(JASWANT SINGH)
JUDGE

September 25, 2017
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>