

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

**Civil Revision No.8067 of 2014 (O&M)
Decided on : 24.04.2017**

Madan Lal Rambani (since dead) through his L.Rs.

... Petitioners

Versus

Charanjit Singh

... Respondent

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

Present : Mr. Sudeep Mahajan, Advocate
for the petitioners.

Mr. Baldev Raj Mahajan, Senior Advocate with
Mr. Akhilesh Vyas, Advocate for the respondent.

G.S. Sandhawalia, J. (Oral)

The petitioners challenge the order dated 19.09.2014, whereby the Civil Judge (Junior Division), Amritsar has dismissed the execution application having become infructuous on the ground that the respondent-tenant being the judgment debtor has already parted with the suit property, in view of the decree dated 25.09.2013 passed by the Court of Ms. Sherryl Sohi and given possession to one Pardeep Kumar. Resultantly, the execution application has been rendered infructuous giving the decree holder separate appropriate remedy, which he has liberty to avail.

A perusal of the order impugned would go on to show that, the objections were filed none else by Charanjit Singh, who is the tenant against whom ejectment had been ordered by the Appellate Authority, Amritsar way back on 13.04.2010 (Annexure P-4) from the premises bearing *Khana Shumari* No.2281/V at present Property No.1621 situated at Bazar Atal

Sahib, Amritsar, in an eviction petition filed on 03.06.1999 by the predecessor in interest of Madan Lal Rambani, who was son of Baij Nath.

A perusal of the order of the Rent Controller would go on to show that the original landlord had claimed that tenancy was from 01.09.1983 and, thereafter, there was a rent note dated 13.09.1983. By virtue of family settlement 24.09.1987, which was confirmed by the Civil Court vide decree dated 15.01.1988, he had become owner of the land in dispute and there existed a relationship of landlord and tenant between the parties. Resultantly, eviction had been sought on the ground of personal requirement of the premises which are on the ground floor of the described property.

The respondent-tenant/Charanjit Singh claimed that it was rented out on 05.01.1971 @ ₹55/- per month and he has also tendered the rent before the Rent Controller. Denial had been made to the ground of bonafide requirement, but there was no dispute as such regarding the relationship of tenancy as such. The ejectment was denied initially by the Rent Controller on the ground that the landlord had died and, therefore, on account of subsequent events, the need was not there.

As noticed, the appeal was allowed on 13.04.2010 and the **CR-3465-2010** filed by the respondent was dismissed on 26.04.2011 (Annexure P-5). The petitioner-landlord had filed the execution application on 25.09.2010, in view of the fact that the ejectment had been ordered by the Appellate Authority.

During the pendency of the execution application, on

account of the revision being dismissed apparently a clever move was made. One Pardeep Kumar filed an application on 30.11.2012 under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 against the respondent-judgment debtor, whereby he sought ejectment on the grounds of non-payment of rent, addition, alteration and change of user etc. He claimed that the property had been inherited by him being the legal representative of Shambhu Nath. It was also alleged that Baijnath Rambani the grandfather of petitioners through whom the petitioners are seeking their right, was also a co-sharer. A Will dated 11.06.1986 was set up, which had been executed by Shambhu Nath in his favour. On account of the non-payment of the provisional rent assessed, eviction was ordered on 22.11.2013 (Annexure P-8). A statement was made on 03.05.2014 that the possession had been taken and the execution application stood satisfied. It was in such circumstances, the execution application has been dismissed as having been rendered infructuous.

Counsel for the petitioner is well justified to submit that it was all a charade to defeat the execution proceedings. He has referred to an order passed on 04.12.2013 (Annexure P-13) also filed by the said Pardeep Kumar in another set of proceedings initiated by the petitioners pertaining to the first floor of the premises in question which was preferred by one tenant Satbir Singh, wherein the application of said Pardeep Kumar was dismissed on the ground that the unregistered Will dated 11.06.1986 had never seen the light of the day for more than 26 years. It was further held that ownership was not required to be

determined. It is to be noticed that the respondent-tenant had never pointed out in his written statement the factum of earlier proceedings which had been decided against him, which goes on show the collusion which is apparent.

In the present case as noticed, the Executing Court had failed to take into account the fact that the Pardeep Kumar had never filed any third party objection and in spite of that the execution application has been rendered infructuous. As per the case of the respondent himself he is not in possession and it is his own case that the possession is with one Pardeep Kumar who had never filed any objection petition.

In such circumstances, it is apparent that the devious method had only been adopted to deprive the petitioners of the fruits of litigation in an petition for eviction filed on 03.06.1999. It is well-known that the travails of the litigant start in the execution proceedings. This is a classic case where this principle has been proved right. Unfortunately, the Executing Court fell into the trap, which had been set up and woven with dexterity and dismissed the execution application. Thus, leaving the decree holder/landlord allegedly with the opportunity to avail some alternative remedy.

The observations of the Apex Court in *S.P.Changalvaraya Naidu (dead) by Lrs Vs. Jagannath (dead) by Lrs. 1993 (Suppl.) 3 SCR 422* would thus, be applicable in the facts and circumstances of the present case “that fraud is an act of deliberate deception with the design of securing something and getting unfair advantage and is a nullity and

nonest in the eyes of law. Courts of law are meant for imparting justice and not to become engine of fraud in the hands of dishonest litigants”.

The only argument in defence raised by the senior counsel for the respondent is that his liability to pay the arrears would be there.

Counsel for the petitioner with grace submits that he will not claim any arrears of rent from the respondent after the eviction order passed by the Appellate Authority.

In such circumstances, this Court is of the opinion that the impugned order cannot be sustained and is, accordingly, set aside. A direction is issued to the Executing Court to implement the order of eviction passed by the Appellate Authority on 13.04.2010, which had been duly upheld in **CR-3465-2010** on 26.04.2011 (Annexure P-5) and get the vacant possession of the premises in question handed over to the present petitioner within a period of two months from the receipt of the certified copy of this order.

With the abovesaid observations, the present revision petition stands allowed.

APRIL 24, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No