

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

CR No.8778 of 2017

Date of Decision:20.12.2017

Dhanraj

.....Petitioner

Vs.

Ved Parkash Khurmi and anotherRespondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK SIBAL

Present:- Mr. Abhinav Gupta, Advocate for the petitioner.

Mr. Rajan Bansal, Advocate for respondent No.1.

DEEPAK SIBAL, J.(Oral)

On the asking of the Court, learned counsel for the petitioner has produced interim orders from 19.09.2014 to 03.03.2016 passed by the Rent Controller, Bathinda in RP-94/2013 – Ved Parkash Khurmi v. Dhanraj and order dated 02.09.2016 passed in execution proceedings in Exe/313/2016 – Ved Parkash v. Dhanraj etc. The same are ordered to be taken on record as Annexure Mark `A' (collectively).

Through the present petition challenge is made to order dated 21.11.2017 passed by the Civil Judge (Junior Division), Bathinda dismissing the application filed by the petitioner for staying the execution of the ex-parte eviction order passed against him during pendency of the application filed by the petitioner for setting aside the afore-referred ex-parte eviction order.

The case set up by the petitioner before the trial Court was that on 18.05.2017, when a Court bailiff came to the tenanted premises with the warrants of possession, the petitioner came to know that on 05.03.2016, an

ex parte eviction order had been passed against him and the afore-referred warrants of possession had also been issued by the Executing Court in pursuance to the application filed by respondent No.1 seeking execution of the eviction order. On getting such knowledge, on 19.05.2017, the petitioner filed an application under Order 9 Rule 13 of the Code of Civil Procedure, 1908 (for short, 'the Code') for setting aside of the ex parte eviction order dated 05.03.2016 as also an application for staying the execution proceedings during the pendency of his application filed by him under Order 9 Rule 13 of the Code. The primary submission was that the counsel for the petitioner, who had been appearing for him in the eviction proceedings had died on 02.07.2015 and, thereafter, the petitioner was not aware of the proceedings either before the Rent Controller or the Executing Court. The petitioner pleaded that the eviction order had been obtained by the respondent by playing fraud upon him and all that he sought from the Court was a decision on merits in the eviction proceedings and stay of the execution proceedings till his application for setting aside of the ex-parte eviction order was decided as according to him, if the same was not done, it would make his remedy availed by him under Order 9 Rule 13 of the Code virtually infructuous.

On being put to notice, the respondent No.1 denied that the petitioner had only come to know about the ex-parte eviction order dated 05.03.2016 as also about the pendency of the execution proceedings only on 18.05.2017. According to respondent No.1, on the death of his counsel on 02.07.2015, the petitioner had appeared in person before the Rent Controller, Bathinda and after bringing to the knowledge of the Court with

regard to the demise of his counsel had sought and got an adjournment for engaging a new counsel. Thereafter, since the petitioner failed to appear before the Rent Controller on subsequent dates, through order dated 10.09.2015, he was rightly ordered to be proceeded against ex-parte and the culmination of such proceedings led to the final eviction order dated 05.03.2016. So far as the execution proceedings were concerned, respondent No.1 submitted that order dated 02.09.2016 passed by the Executing Court clearly revealed that both the petitioner as also respondent No.2- his son were served in such proceedings. However, though the petitioner chose to remain absent, a counsel had put in appearance on behalf of his son respondent No.2. It was thus submitted that even after the death of his counsel, the petitioner was well aware with regard to the pendency of the eviction proceedings as also the execution proceedings. It was denied that the respondent had played any fraud upon the petitioner. It was stated that in fact the petitioner had not come to the Court with clean hands and, therefore, on this ground alone, deserved no relief.

The trial Court dismissed the application filed by the petitioner for stay of the execution proceedings during the pendency of the application filed by him under Order 9 Rule 13 of the Code. It is this order which is the subject matter of challenge in the present petition.

Learned counsel for the petitioner submitted that order dated 02.07.2015 passed by the Rent Controller recording the presence of the petitioner as also his request for adjournment to engage a new counsel cannot be relied upon for the simple reason that no statement of the petitioner to that effect had been got recorded on that date. It is further

submitted that in case the relief as prayed for by the petitioner is not granted, proceedings initiated by him under Order 9 Rule 13 of the Code would be rendered infructuous for no fault on the petitioner's part.

In support of his arguments, counsel for the petitioner has cited the following judgments of this Court/ Delhi High Court:-

- (i) **Davinder Pal Singh and another v. Narinder Pal Singh and others, 2016(3) R.C.R. (Civil) 194;**
- (ii) **Sunita Khanna v. B.L. Gupta and another, 2001(3) LJR 543;**
- (iii) **Narinder Kumar v. M/s N.K. Electronics, 2010(5) R.C.R. (Civil) 697;**

The submissions made by learned counsel for the petitioner do not warrant a favourable consideration.

It is not disputed that the application seeking stay of the execution proceedings had been filed by the petitioner on 19.05.2017 and that in such application it had specifically been pleaded that the petitioner had become aware about the pendency of the execution proceedings as also passing of the ex-parte eviction order only a day prior to the filing of such application i.e. on 18.05.2017. The given reason was that on 02.07.2015 the counsel who had been appearing on behalf of the petitioner had expired and thereafter, the petitioner had no intimation whatsoever with regard to the further proceedings in the matter.

The interim order dated 02.07.2015 passed by the Rent Controller in the eviction proceedings belie the above claim of the petitioner. It would be advantageous to refer to such order. The same

reads as under:-

“Present: Sh. Inderpal Singh proxy counsel for Sh. NM Aggarwal, Advocate counsel for applicant.
Respondent in person.

At the request of respondent that his Counsel Sh. R.N. Jain Advocate has expired and he wants to engage new counsel, case stands adjourned to 06.08.2015 for consideration on application under order VI Rule 17 Order 1 Rule 10 read with Section 151 CPC.” (emphasis supplied).

A perusal of the afore-quoted order clearly reveals that on 02.07.2015, on the demise of his counsel, the petitioner had appeared in person before the Rent Controller and after apprising the Court about his counsel's demise, he had sought time to engage a new counsel. Accepting his request, the Rent Controller not only adjourned the eviction petition to 06.08.2015 but also the application filed by respondent No.1 under Order 6 Rule 17 read with Order 1 Rule 10 of the Code. It is not disputed that the above reproduced order was neither challenged nor questioned by the petitioner. Thus, the petitioner was not only aware with regard to the pendency of the eviction proceedings and the next date in the matter but also that an application under Order 6 Rule 17 read with Order 1 Rule 10 of the Code had been filed by respondent No.1 which was also pending.

In view of the above, the stand taken by the petitioner before the trial Court as also this Court that after the demise of his counsel on 02.07.2015, he became aware of the eviction proceedings only on 18.05.2017 is a stand which can only be termed as false. There was a clear attempt by the petitioner to mislead the Court.

The stand of the petitioner both before the trial Court as also before this Court was that he also came to know about the execution proceedings only on 18.05.2017, i.e. a day before he filed the application seeking stay of the same. This stand of the petitioner is also falsified by order dated 02.09.2016 passed by the Executing Court which reads as under:-

“Present:- Sh. N.M. Aggarwal Adv, counsel for DH.

Sh. Pankaj Jain Advocate appeared and filed power of attorney on behalf of JD no.2. Notice issued to JD no.1 received back served. But none has appeared on behalf of JD no.1. It is already 4.00 p.m. Hence, JD no.1 is hereby proceeded against ex parte. Let case be adjourned to 12.09.2016 for filing objection.” (emphasis supplied)

The order reproduced above clearly shows that the petitioner had been served in the execution proceedings but did not bother to appear in the same. The order further reveals that respondent No.2, who is the petitioner's son was not only served but was represented through counsel. This order too, admittedly, remains unquestioned and unchallenged by the petitioner. That being so, I have no hesitation in coming to the conclusion that at least on 02.09.2016 or some time prior thereto, the petitioner as also respondent No.2, who is his son, became aware with regard to the pendency of the execution proceedings. However, a false stand was taken by the petitioner for seeking stay of the execution proceedings that he came to know about the pendency of the same only a day before the date of filing of the application i.e. on 18.05.2017.

From the above observations, it is clear that the petitioner's stand that after 02.07.2015 he became aware of the eviction proceedings as also the execution proceedings only on 18.05.2017 is a false stand taken by him and such a finding is based on the afore-quoted judicial orders which remain unchallenged. In fact the afore-quoted orders are found not even referred to by the petitioner in either the application filed by him before the trial Court or in the grounds of the present revision petition and were produced only on the asking of the Court. The petitioner is thus guilty of having approached the Court with unclean hands and has thereby abused the process of the Court by making patently false statements. In fact, in the present case, the Court finds itself in an unfortunate situation wherein a litigant/the petitioner has attempted to use the demise of his counsel to his advantage.

The Apex Court in **Kishore Samrite v. State of U.P. and others, (2013) 2 SCC 398**, has laid down guidelines to deal with litigants who do not approach the Court with clean hands. The same are as under:-

“29. Now, we shall deal with the question whether both or any of the petitioners in Civil Writ Petition Writ Petition Nos.111/2011 and 125/2011 are guilty of suppression of material facts, not approaching the Court with clean hands, and thereby abusing the process of the Court. Before we dwell upon the facts and circumstances of the case in hand, let us refer to same case laws which would help us in dealing with the present situation with greater precision. The cases of abuse of the process of court and such allied matters have been arising

before the Courts consistently. This Court has had many occasions where it dealt with the cases of this kind and it has clearly stated the principles that would govern the obligations of a litigant while approaching the court for redressal of any grievance and the consequences of abuse of the process of court. We may recapitulate and state some of the principles. It is difficult to state such principles exhaustively and with such accuracy that would uniformly apply to a variety of cases. These are:

(i) Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the Courts, initiated proceedings without full disclosure of facts and came to the courts with 'unclean hands'. Courts have held that such litigants are neither entitled to be heard on the merits of the case nor entitled to any relief.

(ii) The people, who approach the Court for relief of an ex parte statement, are under a contract with the court that they would state the whole case fully and fairly to the court and where the litigant has broken such faith, the discretion of the court cannot be exercised in favour of such a litigant.

(iii) The obligation to approach the Court with clean hands is an absolute obligation and has repeatedly been reiterated by this Court.

(iv) Quests for personal gains have become so intense

that those involved in litigation do not hesitate to take shelter of falsehood and misrepresent and suppress facts in the court proceedings. Materialism, opportunism and malicious intent have over-shadowed the old ethos of litigative values for small gains.

(v) A litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final.

(vi) The Court must ensure that its process is not abused and in order to prevent abuse of the process the court, it would be justified even in insisting on furnishing of security and in cases of serious abuse, the Court would be duty bound to impose heavy costs.

(vii) Wherever a public interest is invoked, the Court must examine the petition carefully to ensure that there is genuine public interest involved. The stream of justice should not be allowed to be polluted by unscrupulous litigants.

(viii) The Court, especially the Supreme Court, has to maintain strictest vigilance over the abuse of the process of court and ordinarily meddlesome bystanders should not be granted “visa”. Many societal pollutants create new problems of unredressed grievances and the Court should endure to take cases where the justice of the lis well-justifies it.”

Similarly in Abhyudya Sanstha v. Union of India and others, (2011) 6 SCC 145, the Apex Court while dealing with the similar issue observed as follows:-

“19. In **Hari Narain v. Badri Das** AIR 1963 SC 1558, **G. Narayanaswamy Reddy v. Govt. of Karnataka**, (1991) 3 SCC 261 and large number of other cases, this Court denied relief to the petitioner/ appellant on the ground that he had not approached the Court with clean hands. In **Hari Narain v. Badri Das** (supra), the Court revoked the leave granted to the appellant and observed:-

“It is of utmost importance that in making material statements and setting forth grounds in applications for special leave made under Article 136 of the Constitution, care must be taken not to make any statements which are inaccurate, untrue or misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. Thus, if at the hearing of the appeal the Supreme Court is satisfied that the material statements made by the appellant in his application for special leave are inaccurate and misleading, and the respondent is entitled to contend that the appellant may have obtained special leave from the

Supreme Court on the strength of what he characterises as misrepresentations of facts contained in the petition for special leave, the Supreme Court may come to the conclusion that in such a case special leave granted to the appellant ought to be revoked.”

20. In **G. Narayanaswamy Reddy v. Govt. of Karnataka** (supra), the Court noted that the appellant had concealed the fact that the award could not be made by the Land Acquisition Officer within the time prescribed under Section 11A of the Land Acquisition Act because of the stay order passed by the High Court and observed:-

“2. Curiously enough, there is no reference in the special leave petitions to any of the stay orders and we came to know about these orders only when the respondents appeared in response to the notice and filed their counter-affidavit. In our view, the said interim orders have a direct bearing on the question raised and the non-disclosure of the same certainly amounts to suppression of material facts. On this ground alone, the special leave petitions are liable to be rejected. It is well settled in law that the relief under Article 136 of the Constitution is discretionary and a petitioner who approaches this Court for such relief must come with frank and full disclosure of facts. If he fails to do so and suppresses material facts, his application is liable to be dismissed. We accordingly

dismiss the special leave petitions.”

21. In **Dalip Singh v. State of U.P., (2010) 2 SCC 114**, this Court noticed the progressive decline in the values of life and observed:-

“1...For many centuries Indian society cherished two basic values of life i.e. “satya” (truth) and “ahimsa” (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new

rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.”

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23. In the result, the appeals are dismissed. Each of the appellants is saddled with costs of ₹2 lacs, which shall be deposited with the Maharashtra State Legal Services Authority within a period of three months. If the needful is not done, the Secretary, Maharashtra State Legal Services Authority shall be entitled to recover the amount of costs as arrears of land revenue.”

Thus, the Apex Court has authoritatively held that if a petitioner/ appellant does not approach the Court with clean hands, he disentitles himself to be heard on merits or to any relief and to ensure that the Court's process is not abused as also to prevent further abuse, while dismissing his petition/ appeal, the Court is duty bound to impose heavy costs.

It is the petitioner's case that he was aware of the pendency of the eviction proceedings at least till July 02, 2015, i.e. the day when his counsel died. That being so, it is highly unlikely that from July 02, 2015 till May, 2017 i.e. for about two years, the petitioner never bothered to find out the status or outcome of the eviction proceedings which he was facing.

The judgments cited by learned counsel for the petitioner are distinguishable on facts. Also that in none of the cited cases did the Court

come to the conclusion that the petitioner(s) therein had not approached the Court with clean hands as the petitioner herein.

In view of the above, no merit is found in the present petition and the same is hereby dismissed with costs which are quantified at ₹25,000/-.

December 20, 2017
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(DEEPAK SIBAL)
JUDGE

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| 1. | Whether Speaking/ Non Speaking? | Yes/No |
| 2. | Whether reportable? | Yes/No |