

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

**ESA No.225 of 2016 (O&M)  
Decided on: 23.1.2017**

Darshan Singh

....Appellant

Versus

Makhu Zimidara Co-operative Marketing-cum-Processing Society  
Limited, District Ferozepur and another

....Respondents

**CORAM: HON'BLE MRS JUSTICE REKHA MITTAL**

**Present :** Mr. Namit Gautam, Advocate  
for the appellant.

**REKHA MITTAL, J.**

The present appeal directs challenge against order dated 21.03.2016 passed by the Additional Civil Judge (Sr. Division), Zira (hereinafter to be referred as 'the Executing Court') whereby objections filed under Order 21 Rule 97 of the Code of Civil Procedure (in short 'CPC') were dismissed and the order dated 07.11.2016 passed by the Additional District Judge, Ferozepur, dismissing the appeal preferred by the appellant against order dated 21.03.2016 passed by the Executing Court.

Counsel for the appellant has submitted that the Makhu Zimidara Marketing-cum-Processing Society Limited, Makhu (in short 'the society') filed an application under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 against Harbhajan Singh son of Ajit Singh with regard to shop described in headnote of the petition. The ejectment application was dismissed by the trial Court vide order dated 03.11.1988 passed by the Rent Controller, Ferozepur. The appeal

preferred by the society was accepted and ejectment order was passed on 27.11.1989 by the Appellate Authority. The revision petition preferred by Harbhajan Singh before the High Court was also dismissed on 06.12.2006. On eviction proceedings having attained finality, the society filed execution application No.18 dated 17.04.2012 for delivery of possession of the shop in question to the decree-holder – society.

Darshan Singh, the present appellant and admittedly brother of JD – Harbhajan Singh filed the application under Order 21 Rule 97 CPC (Annexure A4) on the premise that the decree-holder – society is trying to apply the eviction order on the shop of applicant – Darshan Singh. Shop of Darshan Singh is a separate shop and has different boundaries than shop of Harbhajan Singh – JD. About one month back, decree-holder – society along with bailiff of the Court came to the spot to take possession of the shop in dispute but they tried to get possession of the shop of the applicant. Shop of Harbhajan Singh – JD is at a distance of 4-5 shops but the DH tried to execute warrants on shop of the applicant.

The objection petition was dismissed by the Executing Court on an earlier occasion but later the matter was remitted to the Executing Court for decision of the objection petition after framing of issues and permitting the parties to adduce evidence while disposing of Civil Revision No.5901 of 2011 *“Darshan Singh vs The Makhu Zimidara Co-operative Marketing-cum-Processing Society Limited, Makhu.”*

Counsel has submitted that the Executing Court in pursuance of the directions issued by this Court framed issues,

permitted the parties to adduce evidence but failed to appreciate the evidence on record in right perspective and as a result recorded incorrect findings against the appellant. It has further been argued that the Court of appeal failed to correctly examine three different site plans proved on record in order to establish plea of the appellant that the shop in regard whereof eviction order was passed against Harbhajan Singh is different from the shop that is in possession of the appellant. It is further submitted that a serious prejudice would be caused to the appellant in case he is dispossessed from the shop in his possession in execution of an eviction order passed against Sh. Harbhajan Singh affirmed by this Court. For this purpose, counsel has carried me through the site plan (Annexure P12) showing the two shops in different colours.

I have heard counsel for the appellant, perused the paperbook and the records.

To substantiate his contention, the appellant tendered into evidence his affidavit which pertains to various facts beyond the averments raised in the objection petition. The allegations set up in the objection petition are quite vague. Nothing has been mentioned as to what are the boundaries of the shop qua which eviction order had been passed against Harbhajan Singh and boundaries of the shop stated to be in possession of the appellant. Not only this, no such plea has been raised as to whom the said shop belongs and in what capacity the appellant is in possession of the shop.

This apart, perusal of the allegations in the petition and so also the evidence adduced by the appellant would make it evident that

the appellant does not claim any right, title or interest in the shop in regard whereof an order for eviction was passed against Sh. Harbhajan Singh that has attained finality between the parties. As the appellant does not claim any right in the property, subject-matter of the eviction proceedings, there was no occasion for him to file any objections, required to be determined by the Executing Court under Rule 101 of Order 21, 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.”***

Under Rule 101, questions arising between the parties to a proceeding on an application under Rule 97 or Rule 99 CPC and relevant to the adjudication of the application shall be determined by the Court dealing with the application and not by a separate suit. Under Rule 97, an application can be made by the holder of a decree for possession of any property or the purchaser of any such property sold in execution of a decree which is resisted or obstructed by any person obtaining possession of the property. Under Rule 99, any person other than the judgement-debtor who is dispossessed of immovable property by the holder of a decree for the possession of such property in

execution of a decree can file an application complaining of such dispossession. As in the case at hand, the appellant does not claim his dispossession from the property, subject-matter of the eviction proceedings, he possibly cannot complain of alleged dispossession from some other shop by invoking the provisions of Order 21 Rule 99 CPC. In this view of the matter, in my considered opinion, the objection petition preferred by the appellant is nothing but an abuse of process of law in order to stall process of execution initiated by the society to recover possession of the shop which is/was in occupation of Harbhajan Singh, real brother of the appellant. That being so, I do not find any merit in the appeal and the same is liable to be dismissed.

For the foregoing reasons, the appeal fails and is accordingly dismissed. However, the Executing Court shall ensure that warrants of possession to be issued are executed only qua the shop in regard whereof eviction order was passed against Harbhajan Singh – JD.

**January 23<sup>rd</sup>, 2017.**  
*yakub*

**(REKHA MITTAL)**  
**JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No