

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.1043 of 2018

Date of Decision: 16.02.2018

Navneet Aggarwal

... Petitioner

Versus

Sushil Tandon & anr.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Aayush Gupta, Advocate,
for the petitioner.

Mr. A.P. Kaushal, Advocate,
for respondent No.1.

RAMENDRA JAIN, J.(Oral)

Through the instant petition filed under Article 227 of the Constitution of India, challenge has been laid to the order dated 19.09.2016 (Annexure P-4) of the executing Court, whereby her third party objections were dismissed in default and order dated 21.12.2017 (Annexure P-8), whereby her application for restoration of her said objections was dismissed.

In nutshell, respondent No.1-decree holder filed execution against the judgment and decree dated 21.09.2015 after it attained finality on dismissal of appeal filed by respondent No.2-judgment debtor by the First Appellate Court, in which the petitioner filed third party objections claiming her interest in the property in question on the basis of agreement to sell in her favour prior to the agreement to sell in favour of respondent No.1-decree holder.

The said objections of the petitioner were dismissed in default on non-appearance of the petitioner or his counsel vide order dated 19.09.2016 (Annexure P-4) by the executing Court. Thereafter, the petitioner moved an

application for restoration of her third party objections after about one year on 11.09.2017, which after hearing both the sides have been dismissed vide impugned order dated 21.12.2017 (Annexure P-8).

Learned counsel for the petitioner contends that the trial Court ought to have decided the objections of the petitioner on merit instead of dismissing her application for restoration of third party objections, which was dismissed in default on 19.09.2016.

On the other hand, learned counsel for respondent No.1-decree holder, who has appeared on his own, has filed his Vakalatnama, strongly opposed the submission of learned counsel for the petitioner, submitting that initially the petitioner filed a suit for specific performance on the basis of alleged agreement to sell, which was dismissed in default, but never tried to restore the same. Thereafter, the petitioner filed another suit for permanent injunction, which was withdrawn by her vide order dated 19.01.2017 by suffering a statement to this effect. Therefore, this petition is not maintainable.

Having given thoughtful consideration to the submissions made by both the sides, I find that the instant petition is completely frivolous and a malafide device to blackmail respondent No.1-decree holder to delay the fruits of decree in his favour.

Undisputedly, no suit of the petitioner either for specific performance or permanent injunction is pending against respondent No.2-judgment debtor, therefore, the executing Court cannot be directed to decide the alleged objections of the petitioner on merits, more particularly, when the petitioner herself had withdrawn her subsequent suit vide order dated 19.01.2017 by making a statement to this effect.

Even otherwise, it is well settled that third party objections can only be heard after delivery of possession to the decree holder. Therefore, from this angle too, the petitioner cannot be heard by the executing Court, till the delivery of possession to the decree holder.

In view of the discussion made above, this appeal stands dismissed with costs of ₹10,000/- to be deposited with the Member Secretary, District Legal Services Authority, Ludhiana.

A copy of this order be sent to the Member Secretary, District Legal Services Authority, Ludhiana, to recover the costs.

In view of the above, this revision petition is dismissed.

16.02.2018
monika

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No