

In the High Court of Punjab and Haryana at Chandigarh

CR No. 3737 of 2018(O&M)

Date of Decision: 31.5.2018

Kanta Rani

---Petitioner

versus

Sunita Rani Sharma and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Gagandeep Singh Sirphikhi, Advocate
for the petitioner
Mr. T.N.Sarup, Advocate
for the caveator-respondent No. 1

Rekha Mittal, J.

The present petition directs challenge against order dated 17.5.2018 passed in the execution proceedings whereby application filed under Order 6 Rule 17 of the Code of Civil Procedure (in short “the Code”) by objector-Kanta Rani to amend the objections filed under Order 21 Rules 96 to 101 and Section 151 of the Code has been dismissed.

Counsel for the petitioner would urge that in the original objection petition filed by Kanta Rani widow of Kamal Kishore, it has been pleaded that part of the property in regard whereof eviction order has been passed in favour of Sunita Rani and against Davinder Kumar was let out by Kamal Kishore to Rajinder Kumar on monthly rent of Rs. 22/- vide rent note dated 1.8.1980 and Rajinder Kumar paid rent to Kamal Kishore till December 2005. After death of Kamal Kishore in the year 2008, his wife Kanta Rani started receiving rent of the shop in dispute from Rajinder

Kumar. By way of the instant application to amend the objection petition, the petitioner has sought to add certain facts to the effect that she has found two rent receipts dated 31.12.1995 and 2.7.1957 in Urdu script from old records lying in her house. The rent receipts were issued by Ram Chand son of Hans Raj in favour of Dharam Pal son of Mulakh Raj as tenant regarding payment of rent. Ram Chand had a brother namely Devki Nandan who died prior to death of Ram Chand. Ram Chand died unmarried and his estate was inherited by Kamal Kishore being class-II heir. It is argued with vehemence that since the facts sought to be added by way of amendment came to knowledge of the petitioner during pendency of proceedings before the Executing court, necessity to plead additional facts for clarification as to how Kamal Kishore became owner of the shop in question accrued.

Further submitted that the Executing court had dismissed the application primarily on two grounds i.e. the application has been filed with an intent to delay the proceedings and the proposed amendment will amount to withdrawal of the earlier admission on the part of the objector. It is argued with vehemence that this Court has already directed the Executing court to dispose of the objections in a time bound manner till 23.8.2018, therefore, there is no question of any delay being caused in case the proposed amendment is allowed. In addition, it is argued that delay itself cannot be a ground to disallow the application because the other party can well be compensated with cost. It is further argued that observations made by the Executing court that proposed amendment will amount to withdrawal of earlier admitted facts is contrary to records because the petitioner does not want to withdraw from any of the facts pleaded in the original objection

petition. On the contrary, she wants to explain as to how Kamal Kishore became owner of the property who let out the same to Rajinder Kumar, vide rent note dated 1.8.1980.

Counsel representing the caveator/respondent No. 1 would argue that Sunita Rani initiated proceedings for eviction of Davinder Kumar that culminated in eviction order passed as back as in the year 2009 but till date, she is not able to fructify fruits of the eviction passed in a rent application filed in September 1999. It is argued that the present application is nothing but filed with an intent to delay the proceedings. It is further argued that the facts sought to be pleaded by way of amendment were well within knowledge of the petitioner but she for the reasons best known, did not disclose the facts in the objection petition originally filed.

I have heard counsel for the parties, perused the paper book particularly the order impugned.

Be that as it may, the Executing court has dismissed the application primarily on two grounds. The first ground that weighed with the Executing court is that the application has been filed with an intent to delay the proceedings. Counsel for respondent No. 1 has not disputed that as per the directions issued by this court, the objection petition is required to be decided on or before 23.8.2018, therefore, the petitioner by filing the instant application cannot afford to delay the proceedings. The second observation made by the Executing court that the proposed amendment will amount to withdrawal of the earlier admitted facts is totally misconceived because the petitioner is asserting her right to the shop in question on the basis of the same being rented out by her late husband Kamal Kishore in favour of Rajinder Kumar at a monthly rent of Rs. 22/- vide rent note dated

1.8.1980. By way of proposed amendment, she has sought to explain as to how shop in question came into the hands of Kamal Kishore. Analyzed from any angle, reasoning adopted by the Executing court is unfounded, therefore, the order impugned cannot be allowed to sustain.

To be fair to the respondent, counsel has made a submission that facts sought to be pleaded by way of amendment were within the knowledge of petitioner at the time of filing of objections. However, there is nothing on record suggestive of the fact that the petitioner had necessary knowledge of the rent receipts dated 31.12.1995 and 2.7.1957 stated to be found from the old records lying in her house. At this stage, court can not examine correctness or otherwise of facts sought to be added by way of amendment.

For the foregoing reasons, the petition is allowed. The impugned order is set aside. Application filed by the petitioner for amendment of the objection petition is allowed, subject to payment of costs of Rs. 10,000/- to be paid to Sunita Rani by way of demand draft on or before the next date of hearing fixed before the Executing court.

Nothing stated hereinbefore shall be construed as an expression of opinion on merits of the case.

(Rekha Mittal)
Judge

31.5.2018

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No