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

**Civil Revision No.5996 of 2018
Date of Decision:25.01.2019**

Mahant Balbir Dass

.....Petitioner

Vs

**Shiromani Gurudwara Prabandhak Committee and another
....Respondents**

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. R.S. Randhawa, Advocate
for the petitioner.

Mr. G.S. Bedi, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.

[1]. This revision petition has been preferred by the petitioner against the order dated 16.08.2018 passed by the Addl. District Judge, Ludhiana allowing the application under Order 18 Rule 17-A CPC filed by the decree holder/respondent No.1 in the execution.

[2]. Perusal of the record would show that in the execution filed by the decree holder/respondent No.1, 3rd party objections were filed by the petitioner as the original judgment-debtor had compromised with the decree holder by not contesting the suit

on merits. The 3rd party objections filed by the petitioner were ordered to be considered by the executing Court vide order dated 12.06.1990 against which CR No.2411 of 1990 was filed by the decree holder in the High Court. Proceedings of the executing Court were stayed. The said revision petition was decided by the Three Judges Bench of this High Court vide order dated 31.01.2007 on the basis of ratio of **Brahmdeo Chaudhary vs. Rishikesh Prasad Jaiswal and another, AIR 1997 SC 856.**

[3]. The issue for consideration before the executing Court was whether the objections filed by the petitioner were required to be adjudicated upon by way of following proper procedure i.e. after framing of issues. With the passing of order dated 31.01.2007 by the High Court in the aforesaid CR No.2411 of 1990, the executing Court was to proceed with the objections after framing of issues and allowing the parties to lead evidence.

[4]. During the intervening period file before the District Court was lost and it was reconstructed only on 20.12.2016 and thereafter evidence was started before the executing Court w.e.f. 21.11.2017. The issues were framed on 09.10.2017.

[5]. It is not in dispute that petitioner is not in possession of the property. The original judgment debtor has not contested the

suit on merits. Petitioner has derived his possessory title from Mal Dass on the ground that he was declared to be Mahant after demise of Mal Dass.

[6]. Learned counsel for the petitioner submitted that the person, who has moved the application has no authority to move the same as he was never authorized by any resolution of the respondent/decreed holder. Only a notarized copy of the application has been filed along with application in question and the same was no authority in the eyes of law.

[7]. Learned counsel by referring to **Neeraj Kumar Sainy and Ors. vs. State of U.P. and Ors., 2017 AIR (SC) 1524** contended that no one should suffer any prejudice because of act of the Court. The case was fixed after conclusion of evidence of the decreed holder and it was only due to technical flow that the same was shown to be fixed for evidence of the decreed holder. The decreed holder cannot derive any benefit from the interlocutory orders on record as the prejudice shall be caused to the petitioner on the strength of maxim "*actus curiae neminem gravabit*".

[8]. On the other hand, learned counsel for respondent No.1 vehemently submitted that since the petitioner has derived his possessory title from Mal Dass, therefore, previous

proceedings in the context of filing writ petition in the High Court are necessary to be considered by the executing Court in larger interest of the parties so as to give rest to the controversy for all times to come. The order dated 24.08.2018 was passed only after the impugned order and on the date of passing of the impugned order, the evidence of the decree holder was in progress and the same was closed only on 24.08.2018, when learned counsel for the decree holder tendered documents and closed the evidence of the decree holder. Passing of the final order was stayed by this Court vide order dated 10.09.2018.

[9]. By referring to the letter dated 22.05.2017, learned counsel for respondent No.1/decreed holder submitted that the application was filed with lawful authority and the objection raised by learned counsel for the petitioner cannot be applied qua application in question particularly, when prayer has been allowed after considering the necessity of these documents. Even the Court according to its conveyance in terms of Order 18 Rule 17 CPC can require these documents to be produced for effective decision of the case.

[10]. I have considered the submissions made by learned counsel for the parties.

[7]. The basic issue before the executing Court was that

Mal Dass had filed a CWP No.775 of 1963 before the High Court to the effect that his objection petition under Sections 8 and 10 of the Sikh Gurudwara Act be forwarded to the Sikh Gurudwara Tribunal. The said writ petition was disposed of vide order dated 05.11.1963. Mal Dass joined the litigation before the Tribunal. Statement of Mal Dass was recorded before the Tribunal on 19.02.1964. There were proceedings under Section 145 Cr.P.C. between Mal Dass and Pritam Dass dated 31.10.1961. One order regarding mutation dated 14.02.1962 was also passed. A letter was also issued by the Under Secretary, Government of Patiala dated 29.09.1950 addressed to the Deputy Commissioner, Fatehgarh for giving sanction for the appointment of Sobha Ram and also to pass interim order under Section 8 of the Act. All these documents were sought to be placed by the decree holder by way of producing certified copy of the same.

[8]. Decree holder also sought to place on record certified copy of the application under Order 40 CPC filed in CWP No.2818 of 1991 and its reply filed by Balbir Dass. Decree holder also relied upon power of attorney in favour of Mukhtiar Singh. All these documents were sought to be placed on record on the ground that these documents have already been referred in earlier proceedings before the Tribunal. Mal Dass was well

aware about the proceedings and these documents would help the executing Court in deciding the controversy in an effective manner. No prejudice would be caused to the judgment-debtor in any manner. Evidence of the decree holder was in progress. The executing Court has found that authenticity of the aforesaid documents has not been specifically denied by the petitioner, who himself has examined Lachhman Gir Clerk of the office of Election Department, who has brought record from the concerned office, but according to learned counsel for the petitioner, the record in question was not brought by him.

[9]. The consideration at this stage keeping in view of the nature of documents sought to be produced on record would be to ensure that production of such documents would enable the executing Court to decide the controversy in an effective manner or not? In any case the petitioner has derived his possessory right from Mal Dass. Petitioner has not raised any plea that the documents are forged or fabricated, rather his plea was only that at such a belated stage, the documents cannot be tendered.

[10]. Even the Court according to its conveyance in terms of Order 18 Rule 17 CPC can require these documents to be produced for effective decision of the case. The Court can allow recall of witness/plaintiff for further cross-examination for further

elaboration. Order 18 Rule 17 CPC is an enabling provision for the conveyance of the Court and the Court can exercise this power for the effective adjudication of the case. Since the prayer has been allowed by the Court, therefore, I deem it appropriate to consider the present case to be that of powers under Order 18 Rule 17 CPC so as to enable the executing Court to decide the issue once for all in an effective mode.

[11]. The documents are not claimed to be forged by the petitioner. In any case, the production of such documents would be subject to legal criticism by the petitioner at an appropriate stage. At the stage of execution, filing of application for production of documents would not entail any such requirement which is required for filing of the suit by way of proper resolution of the Board of Directors. Such an application can be entertained even with the leave of the Court and the powers in terms of Order 18 Rule 17 CPC are wide enough to cover such a measure which in my considered opinion is just and appropriate because the petitioner himself has derived his possessory right from Mal Dass, who was involved in previous litigation in the High Court and at different quarters. The lawful appreciation of previous dispute would enable the executing Court to decide the controversy in an effective and appropriate manner. It is also settled principle of law that if something

remains obscure that can be allowed to be filled by means of additional evidence.

[12]. The ratio of **Neeraj Kumar Sainy and others'** case (supra) is not applicable to the present case as on the date of passing of the impugned order, the evidence of the decree holder was not closed. It was closed only on 24.08.2018. The filing of application for tendering of the documents cannot be held to be barred by any law, nor the same is vitiated by any act of the decree holder. After grant of stay by the High Court in CR No.2411 of 1990, file was lost and the same was reconstructed only on 20.12.2016 and the evidence of decree holder started w.e.f. 21.11.2017 only after framing of issues on 09.10.2017. The present revision petition was filed on 10.09.2018. Perusal of the attending facts and circumstances of the case would show that the indulgence granted by the executing Court cannot be said to be without jurisdiction. If the Court had required production of these documents for effective adjudication of the case, the same can be held to be requirement of the Court and in such circumstances provision in terms of Order 18 Rule 17 CPC would be fully attracted, even though the same has not elaborated in specific form.

[13]. For the reasons recorded hereinabove, I find that there is no error of jurisdiction in the impugned order dated

16.08.2018 passed by the Addl. District Judge, Ludhiana. This revision petition is accordingly dismissed.

January 25, 2019

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Whether speaking/reasoned
Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No
Yes/No