

**CR NO.4426-2019 (O&M)
and another connected case**

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

DATE OF DECISION:-19.07.2019

1. CR NO.4426-2019 (O&M)

ASHOK KUMAR

...PETITIONER...

V.

**SHAKUNTLA KADAN (SINCE DECEASED)
THR. LEGAL HEIRS.**

...RESPONDENT...

2. CR NO.4432-2019 (O&M)

RAVINDER SINGH KADAN

...PETITIONER...

V.

ASHOK KUMAR AND ANR.

...RESPONDENT...

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Sandeep Siwach, Advocate for the petitioner (in CR-4426-2019.

Mr. Abhinav Sood, Advocate for

Mr. Vikram Singh, Advocate for the petitioner (in CR-4432-2019).

Mr. Akshay Jindal, Advocate for the respondent-caveator.

RAMENDRA JAIN, J. (ORAL)

Tenant-judgment debtor-Ashok Kumar has filed Civil
Revision No.2236 of 2019, whereas Ravinder Singh Kadan claiming
himself to be co-owner of the demised property has filed Civil Revision

No.4432 of 2019, against order dated 28.05.2019, whereby, objections

filed by judgment debtor-petitioner-Ashok Kumar and the wakf board were rejected. Simultaneously, dismissing the execution petition filed by petitioner-Ravinder Singh Kadan.

Briefly, one Shakuntla Kadan allottee of demised property from wakf board, inducted petitioner-Ashok Kumar as her tenant in one shop out of total six shops. However, petitioner-Ashok Kumar did not pay the rent to her on time. Therefore, deceased-Shakuntla Kadan filed a suit for possession and recovery of arrears of rent. Simultaneously, she also sought eviction of petitioner-Ashok Kumar before rent controller. During the pendency of said litigation, Shakuntla Kadan died. Upon her death, his two sons namely, Ravinder Singh Kadan, Shivender Singh Kadan and one daughter namely Geeta Rai @ Geeta Singh were brought on record as her legal heirs. After due contest of tenant-Ashok Kumar, the civil suit and the eviction petition both were accepted by the civil court and rent controller.

Being aggrieved, Ashok Kumar preferred appeals against his eviction by the rent controller and judgment and decree of civil court for possession and recovery of arrears. The appellate court and authority setting aside the judgment of the civil court and the eviction order, accepting both the appeals of judgment debtor-tenant-Ashok Kumar, set aside the eviction order of the rent controller and dismissed civil suit for possession and recovery of arrears of rent.

Being aggrieved from the order of the appellate court and authority, legal heirs of Shakuntla Kadan earlier approached this Court,

through a revision petition against the order of the appellate authority, dismissing their eviction petition and regular second appeal against the judgment and decree of the appellate court, whereby their suit for possession and recovery of arrears of rent, was dismissed.

During the pendency of those regular second appeal and revision petition, some litigation ensued between legal heirs of Shakuntla and third person namely, Vijay Singh, in which, respondent-Geeta Rai @ Geeta Singh was declared absolute owner of the entire property left by deceased-Shakuntla Kadan, on the basis of registered Will executed in her favour. Therefore, this Court while deciding RSA and revision petition, declared respondent-Geeta owner of the demised shop and passed eviction in her favour and against Ashok Kumar.

Consequently, respondent filed execution petition to evict Ashok Kumar from the demised shop. Simultaneously, Ravinder Singh Kadan claiming himself to be one of the decree holder and an interested person also filed execution petition for eviction of the petitioner-judgment debtor-Ashok Kumar. Petitioner-Ashok Kumar filed objections apart from the third party objections, by wakf board, which were rejected by the executing court vide order dated 28.05.2019, thereby also rejecting the execution petition filed by Ravinder Singh Kadan.

Learned counsel for the petitioner(s) jointly contend that since, there were third party objections on the record filed by wakf board, therefore, it was incumbent upon the executing court to frame

issues and take evidence from all the interested parties. Ignoring the above settled law, executing court has passed the impugned order illegally without adopting proper procedure.

On the other hand, learned counsel for the caveator-respondent refuting the above submissions, submits that petitioner Ravinder Singh Kadan could not have filed execution petition after declaration of respondent-Geeta Rai @ Geeta Singh as sole owner of the demised property left by her mother deceased-Shakuntla Kadan. The executing court had dismissed third party objections of wakf board, vide order dated 28.05.2019, which has not come before this Court, which means that it has accepted the verdict of the executing court. The objections filed by judgment debtor-petitioner have been dealt with twice in the execution petition by the civil court and the rent controller. Therefore, the same have rightly been rejected.

Having given thoughtful consideration to the rival submissions, this Court finds both the revisions merit dismissal for the reasons to follow:-

1. The objections raised by judgment debtor-Ashok Kumar have already been dealt with elaborately by the civil court and the rent controller, who had initially ordered his eviction and thereafter, by this Court in regular second appeal and in revision petition filed by the legal heirs of allottee Shakuntla Kadan against the dismissal of eviction petition and civil suit for possession and recovery of arrears of rent passed by appellate court and appellate authority, in

which, admittedly the petitioner judgment-debtor was very much a party. Hence, this Court is of the considered view that Ashok Kumar has filed objections just to delay the execution proceedings and vacation of demised shop. As far as dismissal of third party objections filed by wakf board is concerned, it has not come forward to challenge the same, meaning thereby, wakf board has no objection to dismissal of its third party objection by the executing court. Therefore, it does not lie in the mouth of any of the petitioner(s) that executing court was required to frame necessary issues and take evidence from both the sides.

The execution petition filed by Ravinder Singh Kadan has rightly been dismissed in view of the fact that Geeta Rai @ Geeta Singh in some other litigation was declared absolute owner of the demised shop left by their mother Shakuntla Kadan, which was never challenged by the petitioner(s) in appeal or otherwise. Therefore, any judgment or order declaring Geeta Rai @ Geeta Singh absolute owner of the entire property left by Shakuntla Kadan, attained finality.

It is well settled that executing court cannot go behind a decree. Since, the respondent was declared absolute owner on the basis of some registered Will executed and registered by her mother Shakuntla Kadan and petitioner-Ashok Kumar was ordered to be evicted by this Court in a petition filed by her deceased mother, therefore, petitioner-Ravinder Singh Kadan could not have filed any

eviction petition against the petitioner, which has, therefore, rightly

been dismissed.

It is worth mentioning that issues are not necessarily to be framed in each and every execution; on receipt of third party objections, in case, the same are frivolous on their face and are being filed out of sheer greed to delay the execution proceedings.

It seems that wakf board had filed third party objections at the behest of petitioner-judgment debtor Ashok Kumar, to delay the execution proceedings and when it did not succeed, it kept silent. Even otherwise, objections of the wakf board were not maintainable, in view of the fact that relationship between judgment debtor-Ashok Kumar and deceased-Shakuntla Kadan as tenant and landlord, over the demised shop was not in dispute.

I have gone through the impugned judgment and find no illegality and infirmity in the same. Hence, both these petitions stand dismissed.

19.07.2019
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**(RAMENDRA JAIN)
JUDGE**

**whether speaking/reasoned:
whether reportable:**

**Yes/No
Yes/No**