

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

CR No.4563 of 2019 (O&M)
Date of Decision: 1.10.2019

Uma Rani and another

.....Petitioners

Versus

Balwinder Singh and another

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr. Karanjeet Singh Brar, Advocate, for the petitioners.

Mr. Sandeep Khunger, Advocate and
Ms. Nitika Jaura, for respondent No.1.

NIRMALJIT KAUR, J. (ORAL)

The present revision petition is filed under Article 227 of the Constitution of India for setting aside the order dated 6.7.2019 passed by the Civil Judge (Jr. Divn.) Gidderbaha, District Sri Muktsar Sahib, vide which, the application for terminating the execution proceedings filed by the petitioner, was dismissed. Further prayer has also been made to set aside the order dated 15.7.2019 passed by the Civil Judge (Jr. Divn.), Gidderbaha, District Sri Muktsar Sahib, vide which, the Executing Court has issued warrants of possession.

The civil suit for specific performance was decided in favour of respondent No.1 way back on 3.3.2010. Thereafter the appeal against the said order too was dismissed vide judgment and order dated 31.1.2012. RSA against the same was dismissed by this Court on 7.3.2012. SLP too was dismissed on 15.3.2013 by Hon'ble the Supreme Court. Thereafter, respondent No.1 filed execution petition. During the pendency of the said execution petition, the petitioner filed an application that power of attorney

dated 7.6.2010 was signed by the decree holder-respondent No.1 and nor

signed by the Advocate Pleader and that no counsel had accepted the power of attorney of the decree holder. As such, the same cannot be accepted. Further, Shri Ravinder Pal Singh Advocate is appearing on behalf of respondent No.1 without filing of any power of attorney. The said application was dismissed, vide impugned order dated 6.7.2019 by observing that, the decree holder had himself suffered a statement before the Court that he had engaged Shri Ravinder Pal Singh, Advocate as his counsel since the filing of the suit and the execution is continuation of the proceedings.

Learned counsel for the petitioner while praying for setting aside the said orders, has placed reliance upon the judgments of Hon'ble the Supreme Court rendered in the case of Karnataka Housing Board vs. K.A. Nagamani, 2019 AIR (SC) 2290, judgment of this Court in the case of Pat Ram, etc. vs. Ekam Singh, etc. 1971 CurLJ 294 and judgment of Rajasthan High Court in the case of Ramkaran vs. Shrikishan and others, 1976 AIR (Raj) 130 to contend that the execution proceedings are not the continuation of the original suit and are separate and independent proceedings.

Upon notice, learned counsel appearing for respondent No.1 has brought to the notice of this Court that vide amendment for State of Punjab, in Order 3 Rule 4, sub Rule 3 of CPC has been substituted for the purpose of Sub Rule 2 CPC providing that the execution of any decree or order in the suit is deemed to be proceedings in the suit. The Order 3 Rule 4, Sub Rule 3 and the said State amendment is reproduced below:-

“Order 3 Rule 4: Appointment of pleader – (1) No pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognised agent or by some other

person duly authorised by or under a power-of-attorney to make such appointment.

(2) Every such appointment shall be (filed in Court and shall, for the purposes of sub-rule (1), be) deemed to be in force until determined with the leave of the Court by a writing signed by the client or the pleader, as the case may be, and filed in Court, or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client.

[(3) Nothing in sub-rule (2) shall be construed-

(a) as extending, as between the pleader and his client, the duration for which the pleader is engaged, or

(b) as authorising service on the pleader of any notice or document issued by any Court other than the Court for which the pleader was engaged, except where such service was expressly agreed to by the client in the document referred to in sub-rule (1)]

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(3) For the purpose of sub-rule (2),

(i) an application or a proceeding for transfer under sections 22, 24 or 25 of this Code, (ii) an application under rule 4 or rule 9 or rule 13 of Order 9 of this Code; (iii) an application under rule 4 of Order 38 of this Code; (iv) an application for review of judgment; (v) a reference arising from or out of the suit; (vi) an application for amendment of the decree or order or the record in the suit or an appeal, reference or revision arising from or out of the suit; (vii) an application for the execution of any decree or order in the suit; (viii) an application for restitution under section 144 or section 151 of this Code; (ix) an application under Section 151 of this Code, (x) an application under Section 152 of this Code; (xi) any appeal (including an appeal under the Letters Patent of the High Court) or revision application from any decree or order in the suit or an appeal arising from or out of the suit; (xii) any application relating to, or incidental to or arising from or out

of such appeal or revision or a reference arising from or out of the suit (including an application for leave to appeal under the Letters Patent of the High Court or for leave to appeal to the Supreme Court), (xiii) any application for directing or proceedings for prosecution under Chapter 35 of the Code of Criminal Procedure, 1898, relating to the suit or any of the proceedings mentioned herein-before or an appeal or revision arising from and out of any order passed in such application or proceeding; (xiv) any application or act for the purposes of obtaining copies of documents or the return of documents produced or filed in the suit or in any of the proceedings mentioned herein-before; (xv) any application for the withdrawal or for obtaining the refund to payment of or out of the monies paid or deposited into the Court in connection with the suit or any of the proceedings mentioned hereinbefore (including withdrawal, refund or payment of or out of the monies deposited as security for costs or for covering the costs of the preparation and printing of the Transcript Record of the appeal to the Supreme court); (xvi) any application for expunging any remarks, observation on the record of or made in the judgment in the suit or any appeal, revision, reference or review arising from or out of the suit; (xvii) any application for certificate in regard to the substitution of heirs in appeal to the Supreme Court arising from the suit and, (xviii) any application under Rule 15 of Order 45 of the Code shall be deemed to be proceedings in the suit”

Therefore, the argument of learned counsel for the petitioner that the execution proceedings are not the continuation of the original suit will not help in the facts of the present case in view of the above amendment for the State of Punjab vide which the execution is deemed to be the proceedings under the suit.

At this stage, learned counsel for the petitioners contended that

same, the Hon'ble the Supreme Court in the case of Karnataka Housing Board (supra) has held that the execution proceedings are not continuation of the original suit. The said argument does not help the petitioner. There is no dispute with the law laid down by Hon'ble the Supreme Court in the case of Karnataka Housing Board (supra), but the same does not help the petitioner because in the said case, the State amendment in the State of Karnataka was not brought to the notice of the Hon'ble Supreme Court.

Faced with the above situation, learned counsel for the petitioners went on to argue that the power of attorney, which was placed on record in the civil suit did not carry the authorization for filing the execution petition. The said argument will not come to the rescue of the petitioner in view of the above amendment and in any case, as already noticed by the Court below, the decree holder has himself suffered a statement that he has engaged Shri Ravinder Pal Singh, Advocate as his counsel since the very filing of the suit and that he was still his counsel.

Reliance is also placed on the judgments of Hon'ble the Supreme Court in the cases of Man Kaur (dead) by LRs vs. Hartar Singh Sangha, 2011(1) RCR (Civil) 189 and S. Kesari Hanuman Goud vs. Anjum Jehan and others, 2014(2) RCR (Civil) 52. The same too do not help the petitioner as each case depends upon its own facts. In the said cases, there is nothing to show that client or litigant himself had stepped into the witness box to confirm that the concerned Advocate was still their counsel and was engaged by them. In the present case, the statement of decree holder is sufficient to prove and evidence of the fact that Shri Ravinder Pal Singh, Advocate was the counsel of the decree holder and had authorization to file the execution petition.

In view of the above, the present revision petition is dismissed
being devoid of merits.

(NIRMALJIT KAUR)
JUDGE

1.10.2019
sharmila

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No