IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.205

CR-1651-2021 (O&M)
Date of decision : 07.10.2021

Surinder Singh (Deceased) through his legal heir Ms. Valerie

..... Petitioner

VERSUS

Kamal Kant Jain (Deceased) through his legal heirs and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present:- Mr. Kapil Aggarwal, Advocate, for the petitioner.

Mr. Sanjay Kaushal, Sr. Advocate with
Mr. Sudhir Kumar, Advocate,
for the caveator-respondent No.1.

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SUDHIR MITTAL, J.

Facts are numerous, but issue in dispute is limited. An application was filed before the executing Court for impleading a trust known as Surinder Hara Foundation (hereinafter referred to as the 'Foundation') as party on the ground that the owner of the property, i.e. late Surinder Singh Hara, had bequeathed the suit property to the Trust through a Will. The application has been dismissed by the executing Court and hence, the present revision petition has been filed.

A suit for specific performance of agreement to sell dated 05.06.1978 was filed by the predecessor-in-interest of the respondents. The subject matter of the agreement was House No.6, Sector 9-A, Chandigarh. The trial Court accepted the agreement to sell, but decreed

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the suit for alternative relief i.e. refund of twice the earnest-money. Appeal and cross-objections were dismissed by the first appellate Court. Regular second appeal filed by the plaintiff was dismissed by the High Court. He then approached the Hon'ble Supreme Court of India which issued notice on 03.11.2008. Leave to appeal was granted and S.L.P was converted into a Civil Appeal. During its pendency, the defendant, namely, Surinder Singh Hara passed away on 26.12.2013. Before his death, he had executed a Will dated 18.01.2011 bequeathing the suit property to Surinder Hara Foundation. On the basis of said Will, the Estate Office, U.T. Chandigarh mutated the suit property in favour of the Foundation on 15.09.2014. On 15.07.2014, one Smt. Beant Kaur (respondent No.5) filed an application in the Supreme Court of India for being impleaded as legal representative of the deceased defendant. The plaintiff filed an application for impleading the Foundation as legal heir. Both these applications were disposed of vide order dated 26.04.2017 without expressing any opinion on the inter-se claims. The Foundation as well as Beant Kaur were impleaded as party respondents. The Civil Appeal was allowed vide judgment dated 27.10.2017. The judgments of the Courts below were set aside and the suit was decreed. Learned counsel for the plaintiff offered to make a payment of Rs.10 crores in view of efflux of time and this offer was accepted. It was observed that possession be handed over immediately after receipt of amount of Rs.10 crores. This amount was deposited on 02.07.2018, whereafter, the plaintiff filed application dated 13.07.2018 for a direction to the executing Court to hand-over possession and execute a registered sale deed. This

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application was disposed of vide order dated 10.08.2018, which is reproduced below for ready reference:-

> 'Heard the learned senior counsel appearing for the parties.
>
> I.A is disposed of stating that on the decree being drawn up, it will be executed in accordance with law.
>
> The amount deposited in this Court shall be sent to the executing Court being Senior Sub-Judge, Chandigarh within a period of four weeks from today alongwith accrued interest thereon, if any.
>
> M.A also stands disposed of.'

The aforementioned order shows that the plaintiff was relegated to his remedy of execution. Consequently, execution application dated 18.11.2018 was filed, wherein, Surinder Singh Hara-J.D was impleaded through his legal heirs namely, Ms. Valerie, wife of late Surinder Singh Hara (Respondent No.1-A) and Beant Kaur, daughter of late Surinder Singh Hara (Respondent No.1-B). JD No. 1-A filed an application dated 09.07.2021 for suitable correction of zimni orders and for impleading the Foundation as a party. This application has been rejected by the executing Court vide impugned order dated 28.07.2021 (Annexure P-1).

The relevant observations of executing Court are as under:-

> '7. Perusal of the file shows that on 13.03.2019, Sh. Nisheeth Bhatt, Advocate, had filed power of attorney on behalf of JD No.1A and the said fact has been rightly

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recorded by the Ld. Predecessor of this Court that Sh. Nisheeth Bhatt, Advocate, filed power of attorney on behalf of JD No.1A. However, in the said zimni order appearance of JD No.1B has been inadvertently recorded which was rectified on the next date of hearing i.e. 19.03.2019. So, the contention of learned counsel that his presence was wrongly recorded in the zimni order dated 13.03.2019, is not tenable. Further, it is the objection of learned counsel for JD No.1A that he has filed the power of attorney on behalf of Surinder Hara Foundation as per the Will of Late Surinder Singh Hara. Perusal of the power of attorney filed by Sh. Nisheeth Bhatt, Advocate on 13.03.2019 clearly reflects that he himself has put in appearance representing JD No.1A. Now, JD No.1A as per the execution application is Ms. Valerie w/o Late Surinder Singh Hara, Surinder Hara Foundation. So, this argument/objection that the zimni order dated 13.03.2019 and 19.03.2019 be corrected and title sheet may be amended for the clear depiction of all the necessary parties, is not maintainable in this execution petition. This Court as an Executing Court is to execute the decree as per the order dated 27.10.2017 and 10.08.2018 passed by the Hon'ble Apex Court and the LRs of the deceased Surinder Singh Hara shall step into the shoes of the seller i.e. Surinder Singh Hara. Moreover, every application in this execution has been moved by the Ld. Counsel representing himself on behalf of

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> JD No.1A. To my opinion, this application has been moved just to linger on the execution of this case by one reason or the other as the Ld. Counsel for JD No.1A comes to the Court on every hearing alongwith one or two applications. He has also availed all his legal remedies upto Hon'ble Supreme Court of India. The fact that Surinder Hara Foundation has already been impleaded as a party as is clear from the execution application. As stated above the Ld. Counsel for JD No.1A has filed the power of attorney on behalf of JD No.1A, which is a foundation and the foundation has rightly been made a party and there is no need to correct any zimni order or to amend the title of the case.'

In sum and substance, the finding of the executing Court is that the Foundation is already a party.

Learned counsel for the petitioner has submitted that the aforementioned finding is patently erroneous. A perusal of the execution petition shows that Surinder Singh Hara has been impleaded through his legal heirs, namely, wife and daughter as JD No.1-A and 1-B, respectively. The Foundation is not a party. Being the owner of the suit property, it is a necessary party as sale deed has to be executed on its behalf.

On the other hand, learned senior counsel for the legal heirs of respondent No.1-plaintiff states that 16 different applications have been filed on behalf of JD No.1-A and 41 dates have been taken. Attempt is to delay the proceedings on one pretext and the other. The conduct of the

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judgment debtors is not liable to be condoned and the Supreme Court has commented upon the conduct of judgment debtors in very harsh terms in Rahul S. Shah Vs. Jinendra Kumar Gandhi and others, 2021 SCC Online SC 341. While decreeing the suit of the plaintiff, the Supreme Court had observed that possession be handed over immediately on deposit of payment. Payment was deposited on 02.07.2018, but even three years later, decree holder has not been able to get possession. The Foundation is a party as Ms. Valerie Jane Hara (JD-1A) is the Settler/Managing Trustee and her address mentioned in the executing petition is Surinder Hara Foundation, VPO-Amadalpur, Tehsil Jagadhri, District Yamunanagar, Haryana. Under the circumstances, the executing Court was justified in dismissing the application.

As observed hereinabove, in the executing petition, Surinder Singh Hara (deceased-JD) has been impleaded through his legal heirs, namely, Ms. Valerie Jane Hara and Beant Kaur. I have been informed that Beant Kaur has been proceeded against ex parte before the executing Court. Thus, it is evident that she has no interest in the suit property and is not contesting Will dated 18.01.2011 executed by late Surinder Singh Hara. In her absence only JD No.1-A is on record, who is Valerie Jane Hara. Thus, executing Court has committed a patent error of law by holding that the Foundation was a party. The observation of the executing Court that there is a deliberate intent to delay the execution may be justified, but that does not furnish a ground for passing an order contrary to law.

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Basic argument raised on behalf of the decree holder is that the conduct of the judgment debtor deserves to be deprecated. Keeping in view, the delay caused by the judgment debtor, the impugned order should not be interfered with. In my opinion, the decree holder should have been better advised not to contest the application as the same has contributed to the delay. The judgment in Rahul S. Shah's case (supra) does not aid the decree holders-respondents in any manner, because the said judgment is not an authority for deciding a case wrongly, if the judgment debtor adopts delaying tactics.

For the aforementioned reasons, the revision petition is allowed and impugned order dated 28.07.2021 (Annexure P-1) is set aside.

The Foundation is directed to be impleaded as a party. The decree holder may file a suitable application to amend the memo of parties.

(SUDHIR MITTAL)
JUDGE

07.10.2021
Ramandeep Singh

Whether speaking / reasoned Yes / No
Whether Reportable Yes/ No

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