

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR-8191-2018 (O&M)

Date of decision: 14.02.2023

Ritika Goyal & Another

...Petitioner(s)

Vs.

M/s Nanu Ram Goyal Construction Co. Pvt. Ltd.

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Argued by:- Mr. Prateek Mahajan, Advocate for the petitioners.

Ms. Isha Goel, Advocate for the respondent.

NIDHI GUPTA, J.

Present Civil Revision has been filed seeking setting aside of order dated 23.07.2018 (Annexure P1) passed by learned Civil Judge (Junior Division), Faridabad whereby the objections of the petitioners have been dismissed; and order dated 01.10.2018 (Annexure P2) passed by learned Additional District Judge, Faridabad whereby the petitioners' appeal against above said order has also been dismissed.

Brief facts of the case are that petitioners were tenant in the demised premises describable as shop No.4 at ground floor, SCO No.102-103, Sector 16 Market, Dwarka Complex, Faridabad (hereinafter referred to as 'the demised premises'). The said premises were taken on rent by the petitioners from the respondent/landlord vide rent agreement dated 05.11.2007. As a dispute arose between the parties in the year 2010 on various counts, the respondent filed a suit for ejectment against the petitioners. However, during pendency of the said suit, the matter was

compromised between the parties and said civil suit was decreed in terms of compromise vide Judgment and Decree dated 30.10.2014 (Annexure P3 collectively).

As per terms of compromise, the petitioners undertook to vacate the demised premises on or before 30.06.2015. It was however, further stipulated therein that in case, the petitioners failed to vacate the premises on or before 30.06.2015, then a decree for recovery of Rs.3,64,020/- along with interest at the rate of 12% per annum may be passed in favour of respondent.

It is the case of the petitioners that there was also a dispute inter se the parties in respect of another shop No.9 in the same complex which was in occupation of the petitioners and since the said shop was a Gun House/Armoury Shop it could not be shifted without prior permission of the State Government. However, said shop No.9 has no concern with the present proceedings.

It is the pleaded case of the petitioners that they offered to vacate the demised premises/shop No.4 several times between the period January, 2015 to 29.06.2015 and even a legal notice dated 12.06.2015 (Annexure P5) to this effect was sent to the respondent. It is submitted that on 29.06.2015, the petitioners even vacated shop No.4 in presence of one Mr. Azad and requested the respondent to take keys of the said shop. However, the respondent refused to take the keys and instead filed present Execution Petition dated 06.07.2015 claiming that the petitioners had not vacated the demised premises as decreed and hence he

was entitled not only for possession but also recovery of amount of Rs.3,93,141/- inclusive of interest.

On notice, the petitioners appeared before the learned Executing Court and gave a statement that they had vacated the tenanted premises on 29.06.2015 and that it was the respondent who had refused to take possession of shop No.4 in presence of aforementioned Mr. Azad and even it was the respondent who had refused to take keys of the said shop.

It is submitted by learned counsel for the petitioners that throughout their intention has been bona fide which is borne out from the fact that on next date of hearing i.e. 07.10.2015, they had handed over keys of the demised premises in the Court itself to the respondent, which fact is evident from order dated 07.10.2015 (Annexure P11) passed by learned Executing Court.

It is further submitted that learned Executing Court without ascertaining the true facts and without granting any opportunity to the parties to lead evidence as to whether the petitioners had actually vacated the demised premises on 29.06.2015 and had offered keys of the said premises to the respondent, simply dismissed objections of the petitioners by way of impugned order dated 23.07.2018 (Annexure P1).

It is further submitted that even in the appeal, the learned Additional District Judge, Faridabad has failed to appreciate correct facts as submitted hereinabove and passed impugned order dated 01.10.2018 (Annexure P2) which is contrary to the factual position as well as settled provisions of law.

It is also submitted by learned counsel for the petitioners that bona fide intention of the petitioners is clear throughout the record of the case. It is stated that the petitioners' clear intent to vacate is borne out from: a) legal notice dated 12.06.2015 which was served well within time; and b) the categorical statements of the petitioners and their counsel which were recorded before the Court below stating that they had vacated the shop on 29.06.2015 and it was the respondent who had refused to take keys of the shop.

Learned counsel for the petitioners has very ably taken me through the record of the case to persuasively submit that factum of legal notice having been served upon the respondent has not been denied by the respondent, as is evident from Execution Petition dated 06.07.2015 (Annexure P6) itself filed by the respondent wherein legal notice dated 12.06.2015 has been mentioned. Learned counsel further refers to objections dated 03.09.2015 (Annexure P9) filed by the petitioners and submits that even therein it was mentioned that despite due service of legal notice wherein it had been categorically stated by the petitioners that respondent got physical vacant possession on 29.06.2015, yet the decree holder did not turn up to take possession on 29.06.2015 though offer had been made by way of legal notice dated 12.06.2015. It is submitted that accordingly, mala fide intention of respondent to grab a huge sum of money from the petitioners is evident.

Learned counsel further refers to Annexure P14 which is affidavit dated 29.11.2018 given by Mr. Harish Kumar Chetal, the petitioners' counsel before the Courts below, who is a senior member of

Faridabad Bar Association wherein he has stated that on instructions from his clients (petitioners) he had offered keys of shop No.4 to counsel for the respondent before the learned trial Court on 08.01.2015 and 10.01.2015.

Para 5 to 7 of the said affidavit are reproduced hereinbelow:-

“5. That accordingly I have offered the keys of Shop No.4 to Sh. Ashok Mittal, and his Junior Sh. Neeraj, Counsel for the petitioner M/s Nanu Ram Goyal Construction Co Pvt. Ltd on 08.01.2015 & 10.01.2015. However, Sh. Ashok Mittal asked let the possession of both the shops be handed over together.

6. Thereafter, a legal notice dated 12.06.2015 was duly sent by me to petitioner company M/s Nanu Ram Goyal Construction Co Pvt. Ltd while offered him to take the keys of the said shop i.e. Shop No.4, SCO-102/3, Sector-16, HUDA Market, Faridabad and also requested him to remove the objection filed by him about not to shifting the Arms and Ammunition dealership Licenses of my client, so that licensing Authority Faridabad allow my client to shift the Arms and Ammunition to a new shop.

7. That again on 29.06.2015, I personally offered Sh. Ashok Mittal and his Associate Counsel Sh. Neeraj to take the keys of Shop No.4, SCO-102/3, Sector-16, HUDA Market, Faridabad, but he refused to take the same on the instruction of his client.”

It is submitted that therefore, when a senior member of the Bar has stated on affidavit that the petitioners had sought time and again to comply with the Judgment and Decree their bona fide intention cannot be doubted. It is further submitted that besides the above said persons who had supported version of the petitioners, even occupants of

other shops in the complex wherein demised premises is situated, were willing to lead evidence in support of submissions made by the petitioners.

Learned counsel for the petitioners submits that it is therefore, very clear from the submissions made hereinabove that the petitioners had vacated the premises before due date, and only keys remained to be handed over which too, were duly handed over in Court on 07.10.2015, as respondent had refused to accept the keys prior to this. It is further stated that to further prove bona fide on the part of the petitioners, 50% of the decretal amount had been deposited with the learned Executing Court at the time of first hearing in the present Revision Petition. It is submitted that in view of the above facts, and the fact that it is a disputed question of fact as to whether or not the petitioners had vacated the demised premises in time and/or had sufficiently shown their willingness to hand over the keys, present matter may be remanded back to the Executing Court with directions to decide the same in a time bound manner and opportunity may be granted to the petitioners to lead evidence.

Learned counsel for the petitioners refers to judgments passed by this Court in ***Chhotu Vs. Chhotu 1988 CivCC 501; Hem Raj Bansal & Others Vs. State Bank of India 1989 PLJ 703; Santokh Singh Vs. Amar Kaur and Others 2006 (3) RCR (Civil) 67; Balbir Singh Vs. Jagjit Singh 2013 (22) RCR (Criminal) 401; and M/s Woolways Shop Vs. Central Bank of India & Others 1990 AIR (Punjab) 92.***

Learned counsel makes specific reference to Para 2 of ***Santokh Singh Vs. Amar Kaur & Others (supra)*** which is reproduced hereinbelow:-

“2. In the present case, the decree-holders have alleged that after purchasing the suit property in 1989, they have stepped into the shoes of the plaintiff. However, there is nothing on record whether the sale-deed was actually executed in their favour or they stepped into the shoes of the original owner. Under Section 47 of the Civil Procedure Code, all the objections relating to execution of a decree have to be decided by the executing Court. Although it is not incumbent on the executing Court to frame issues unnecessarily and try the objection petition as a suit, but at the same time, if objector raises some disputed question and wants to lead evidence, then executing Court should allow an opportunity to the parties to lead evidence in support of their respective cases. In the present case, the objectors have categorically stated that suit was filed by Subedar Surat Singh on behalf of the original owners as their general attorney. He died before filing the execution petition. It is stated that sale deed, if any, in favour of Satnam Singh and Ajmer Singh is a fictitious, forged and void document. In such circumstances, an opportunity should have been afforded to prove the averments made by the objector in his objection petition and objections should not have been dismissed summarily.”

Learned counsel submits that the Ratio of the law laid down in the above-referred judgments is that if the objector seeks to lead evidence, then the requirement of law is that the Executing Court is bound to frame issues and afford opportunity to the parties to lead evidence and adjudicate upon the matter only thereafter. It is submitted that even in

relied upon case in ***Balbir Singh Vs. Jagjit Singh (supra)*** the matter had been remanded back to the Executing Court for framing of necessary issues to allow parties to lead evidence and thereafter, pass appropriate order in accordance with law. It is submitted that the learned Executing Court is in patent error in summarily dismissing the petitioners' objections without properly considering the matter.

Per contra, it is submitted by learned counsel for the respondent that even taking the petitioners' case at its best, there was *no act done* by the petitioners to comply with the Judgment and Decree. It is submitted that constant stream on the part of the petitioners has always been that they tried to hand over physical possession back to the respondent, however, no or at least not sufficient was done on their part to put words into action. It is submitted that ultimately, the fact remains that possession was handed over in Court only on 07.10.2015 and not on or before stipulated date. It is stated that if the petitioners' intention to hand over possession was honest and refusal on part of the respondent was so clear, then nothing prevented the petitioners from approaching the Courts below in order to ensure compliance with the Judgment and Decree/compromise dated 30.10.2014. It is submitted that a full eight months were given to the petitioners to comply with the compromise and therefore, they had ample time.

It is further submitted that affidavit of Mr. Harish Kumar Chetal, learned counsel for the petitioners before the Courts below, who has filed affidavit of purported compliance, finds no mention either in the objections filed by the petitioners before the Executing Court, nor in the

petitioners' Appeal before the Appellate Court. It is stated that the said affidavit or even the submissions made in the affidavit, have been produced only before this Court.

It is stated that the offer of possession purportedly made on 29.06.2015 is not clear from anywhere on record. Even legal notice dated 12.06.2015 (Annexure P5) talks only about the alleged application made by the respondent to the police to not renew licence for Gun House run by the petitioners. It is submitted that further perusal of the said legal notice shows that the same was only to call upon the respondent to withdraw the complaint filed by him before the police against the petitioners.

It is submitted that accordingly, the petitioners have harped on about one legal notice whereas from their actions it is nowhere borne out that they were willing to comply. It is stated that even before the learned Executing Court when the petitioners had appeared for the first time on 03.09.2015, they had stated that judgment debtors had already vacated the tenanted premises on 29.06.2015. However, admittedly, keys were handed over only on 07.10.2015.

Learned counsel for the respondent supports her contentions with judgment of the Hon'ble Supreme Court in ***Rahul S. Shah Vs. Jinendra Kumar Gandhi (Supreme Court) 2021 (2) RCR (Civil) 854; Prabir Roy Chowdhury Vs. AGR Plantations Pvt. Ltd. (Calcutta High Court DB) 2013 (59) RCR (Civil) 60; Surjan Singh Thakur Vs. Sandeep Sahani***

(Himachal Pradesh High Court) 2021 (1) RCR (Rent) 144; and Anand Singh Vs. Umesh Singh (Allahabad High Court) 2015 (19) RCR (Civil) 923.

Para 25 and 26 of ***Rahul S. Shah Vs. Jinendra Kumar Gandhi (supra)*** are reproduced hereinbelow:-

“25. These provisions contemplate that for execution of decrees, Executing Court must not go beyond the decree. However, there is steady rise of proceedings akin to a re-trial at the time of execution causing failure of realization of fruits of decree and relief which the party seeks from the courts despite there being a decree in their favour. Experience has shown that various objections are filed before the Executing Court and the decree holder is deprived of the fruits of the litigation and the judgment debtor, in abuse of process of law, is allowed to benefit from the subject matter which he is otherwise not entitled to.

26. The general practice prevailing in the subordinate courts is that invariably in all execution applications, the Courts first issue show cause notice asking the judgment debtor as to why the decree should not be executed as is given under Order 21, Rule 22 for certain class of cases. However, this is often misconstrued as the beginning of a new trial. For example, the judgment debtor sometimes misuses the provisions of Order 21, Rule 2 and Order 21, Rule 11 to set up an oral plea, which invariably leaves no option with the Court but to record oral evidence which may be frivolous. This drags the execution proceedings indefinitely.”

No other argument is made on behalf of the parties.

I have heard learned counsel for the parties. I have given my thoughtful consideration to the rival submissions advanced on behalf of

the parties. I find merit in the submissions made on behalf of the respondent.

Perusal of record of the case makes it clear that as stated by learned counsel for the respondent, no concrete, real, final, irrevocable and undeniable act has been taken by the petitioners to fully and finally comply with the Judgment and Decree. The first, and perhaps the only overt act on their part can be said to be the legal notice dated 12.06.2015 served by them upon the respondent. However, even perusal of said legal notice shows that purpose of said notice was to call upon the respondent to withdraw the complaint made by him before the police. Only a passing reference has been made to the demised premises and offer on part of the petitioners to give physical vacant possession on 29.06.2015. The only writing found therein in respect of the demised premises is as follows:

“However, although Shop No.4 is being used as office of my client is required until and unless the gun house is shifted but to avoid any sort of controversy my client offered you to get the physical vacant possession on 29.06.2015 and give in writing having receipt the physical vacant possession.”

Rest of the legal notice talks only about the complaint filed by the respondent before the police. The ostensible purpose of the much-relied upon legal notice is borne out from the final para of the said notice whereby the petitioners have called upon the respondent to:

“I therefore call upon you noticee to withdraw your complaint immediately before the police against my clients after receiving the notice failing which my client shall seek legal

remedy and shall also be entitle to claim damages from you noticee.”

Thus, in my opinion, the legal notice dated 12.06.2015, cannot be construed as any/sufficient compliance by the petitioners of judgment and decree dated 30.10.2014.

Second action stated to have been taken by the petitioners to hand over vacant possession is the affidavit dated 29.11.2018 (Annexure P14) of Mr. Harish Kumar Chetal, learned counsel for the petitioners before the Courts below, wherein he has testified to the factum of petitioners' intention to vacate the premises by stating therein that he himself had offered keys to counsel for the respondent on 08.01.2015 and 10.01.2015, and on 29.06.2015 when he had personally offered keys to counsel for the respondent who had allegedly refused to take the same on instructions of his client. However, it remains an undisputed fact that this affidavit has nowhere been mentioned before the Courts below, either before the Executing Court, or the Lower Appellate Court. Admittedly, said affidavit does not find mention in the objections filed by the petitioners before the Executing Court; and neither before the lower Appellate Court. To my mind, it is therefore, clear that the said affidavit has been produced at a belated stage merely to buttress the case sought to be put forth by the petitioners without deviating from the fact that except for the legal notice dated 12.06.2015, no action whatsoever must have been taken by the petitioners to comply with the Judgment and Decree and to hand over vacant possession of the demised premises to the respondent.

It is further the contention of the petitioners that physical possession was handed over on 29.06.2015. However, admittedly, keys were handed over in Court only on 07.10.2015. There is nothing else on record in support of the petitioners' above contention. No doubt even before the learned Executing Court it has been submitted by them that they had already vacated the tenanted premises on 29.06.2015, however, it is not clear as to on what basis statement was made as admittedly keys were still in their possession and were handed over to the respondent before the learned Executing Court only on 07.10.2015. Further, if the respondent had refused to take possession or keys from the petitioners as far back as on 08.01.2015 as stated by learned counsel for the petitioners in his affidavit, it is not clear as to what prevented the petitioners from approaching the Court below to unequivocally establish their bona fide on record.

In my view, even mala fide intent ascribed to the respondent to grab huge amount from the petitioners is misplaced in view of the fact that admittedly, the respondent has waived outstanding rent of four years and entered into compromise with the petitioners.

Moreover, there are a plethora of judgments laying the law in no uncertain terms that the Executing Court cannot go beyond the decree and has no jurisdiction to modify the decree. In the present case, the terms of compromise/Judgment and Decree dated 30.10.2014 were very clear and categoric inasmuch as *"However, in case, the defendants fail to vacate the premises on or before 30.06.2015 then a decree for recovery of Rs.3,64,020/- along with interest @ 12% per annum may also be passed*

in favour of the petitioner and against the defendants leaving the parties to bear their own costs. After vacation tenant can display board regarding shifting the shop.”

Accordingly, in my view, there is no error in the orders impugned herein. Present Civil Revision is therefore, dismissed.

Pending application(s) if any also stand(s) disposed of.

14.02.2023

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No