

Neutral citation : 2023:PHHC:059877

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 2273 of 2023 (O&M)

Date of decision : 26.4.2023

...

Sunil Kumar Gupta

.....Petitioner

vs.

Saravjeet Singh (since deceased) through his LRs

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Rahul Sharma-I, Advocate for the petitioner.

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H. S. Madaan, J.

Under challenge in this revision petition is order dated 31.3.2023, Annexure P-7, passed by Civil Judge (Junior Division), Chandigarh, in execution petition titled 'Saravjeet Singh vs. Sunil Kumar Gupta', vide which application Annexure P-5, dated 25.1.2023, filed by the petitioner – judgment debtor, for dismissal of execution petition, on the ground that the decree has become nullity and is inexecutable on account of subsequent facts, had been dismissed.

Briefly stated, facts of the case are that, petitioner – decree holder Saravjeet Singh (since dead), through his legal

representatives, had filed an execution application under Order 21 Rule 11 CPC, against Sunil Kumar Gupta, judgment debtor, for claiming possession from the judgment debtor of the premises mentioned in the execution application i.e. two sheds measuring 20' x 42' and 10' x 42', situated in Block No. 65, Gate No.1, Village Dariya, U.T., Chandigarh, on the basis of judgment and decree dated 4.5.2015.

On getting notice, the judgment debtor had put in appearance and filed an application for dismissal of the execution application, contending that judgment debtor has already handed over possession to original owners Ramesh Chander and Suresh Chander on 18.8.2018, as per order dated 1.8.2018 passed by Ms. Nazmeen Singh, Civil Judge (Junior Division), Chandigarh.

That application was resisted by the petitioner – decree holder. Vide impugned order dated 31.3.2023, the application was dismissed, leaving the respondent- judgment debtor aggrieved and he has filed the present revision petition.

I have heard learned counsel for the revision petitioner, besides going through the record.

Learned counsel for the revision petitioner has argued as per the grounds taken in the application, further contending that in view of the subsequent notification issued by the Chandigarh Administration on 9.12.2020, wherein the land falling under Ward No. 9, i.e. including land in question falls within the jurisdiction of Municipal Corporation, as such provisions of Rent Act are applicable and resultantly, the judgments and decrees passed earlier on the basis

of provisions of earlier Transfer of Property Act, have become inoperative and non-executable. For that reason, the execution application be dismissed and learned counsel for revision petitioner has referred to various judgments, in support of his submissions i.e., **Ram Narain and others vs. Ram Lal and others 2004 (1) PLR 634;** **Sat Narain Saini vs. Smt. Sita Wati and another 1980 (1) RCR (Rent) 589** and **Krishan Lal and another vs. Krishan 2010 (2) RCR (Rent) 87.**

However, after hearing learned counsel for the petitioner and going through the judgments cited by him, I do not find myself in agreement with counsel for the revision petitioner and do not see any reason to interfere with the impugned order. The impugned order passed by the Civil Judge (Junior Division), Chandigarh, is quite detailed and well reasoned. It does not suffer from any illegality or infirmity.

In the impugned order itself it has been mentioned that after the suit filed by the plaintiff against defendant judgment debtor was decreed and the defendant was ordered to be ejected from the suit premises i.e. two sheds within two months and the plaintiff was found entitled to recover mesne profits @ Rs.31,500/- per month alongwith interest @ 9% per annum w.e.f. 1.5.2015. The defendant – judgment debtor had filed an appeal, which was also dismissed vide judgment dated 19.2.2016.

The plea set up by the judgment debtor that he has already handed over the possession to the original owners i.e. Ramesh Chander and Suresh Chander, was considered and rejected. Another

objection raised that the present execution is not maintainable, in view of subsequent notification issued by the Chandigarh Administration on 9.12.2020, was also considered, but no reason was found to accept the same, observing that once the judgment has been passed by the Court and till the time it is not set aside in appeal, or revision, the same would be binding upon the parties and Executing Court has to get the decree/order executed. No merit was found in the third objection raised that the decree holder was playing fraud with Court, observing that the judgment debtor has already lost in appeal and he cannot time and again raise those objections, which have already been adjudicated.

The judgments referred to by learned counsel for the petitioner, are not applicable due to different facts and circumstances and the context in which such observations have been made.

Even otherwise, as mentioned in order dated 16.12.2021, passed by Civil Judge (Junior Division), Chandigarh, copy of which has been placed on record as Annexure P-8, an RSA is pending in the High Court. In that appeal the High Court had initially stayed the proceedings of the present execution, however, vide order 14.8.2018, in CM 6714-C-2018 in/and RSA 1599-2016, the High Court had directed the judgment debtor to deposit the arrears of mesne profits within a month, observing further that in case the amount was not deposited on or before 10.9.2018, the interim order would be liable to be vacated. That order was not complied with. Therefore, interim order was not extended. The High Court had directed that appellant may produce copy of notification before the Executing Court, which

may then proceed further in accordance with law. That stay has been vacated.

Under the circumstances, the executing Court was justified in not dropping the proceedings.

There is no merit in the revision petition. The same stands dismissed.

26.4.2023
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(H.S. Madaan)
Judge

Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No