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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

-.-

Civil Revision-2728-2023
Date of decision: 15.05.2023

Anil Butta

.....*Petitioner*

versus

Smt. Sita Devi and others

.....*Respondents*

Coram: Hon'ble Mr. Justice Rajbir Sehrawat

-.-

Present: Mr. A.P. Bhandari, Advocate for the petitioner

Rajbir Sehrawat, J. (Oral)

1) The present revision petition has been filed under Article 227 of the Constitution of India, praying for quashing of the order dated 06.04.2023 passed by the Civil Judge (Junior Division), Faridabad (Annexure P-7).

2) As per the file, the brief facts of the present case are that the petitioner had entered as tenant on the property in question under Lajja Rani Malhotra wife of late Shri K L Malhotra. The said Lajja Rani Malhotra is stated to have shifted to Calcutta. Therefore, she executed a general power of attorney in favour of one Chander Parkash son of Hukam Chand. The said Chander Parkash is stated to have executed another power of attorney in favour of Satbir son of Khushi Ram and the said Satbir is stated to have executed the sale deed in favour of Sita Devi wife of Shri T.R. Bhatia. Therefore, as per the sequence of facts, the said Sita Devi became the landlord and owner qua the property. After acquiring the title,

Sita Devi filed the eviction petition against the petitioner on the ground of personal requirement. The Rent Controller ordered the eviction of the petitioner, vide order dated 15.10.2018. The appeal preferred against the aforesaid order was also dismissed. Not only that, even Civil Revision No. 5557-2020 preferred before this Court was dismissed as withdrawn, vide order dated 27.01.2021. In that revision petition, this Court had granted protection to the petitioner-tenants against his eviction, for a period of six months subject to furnishing of undertaking before the Rent Controller to the effect that they would hand over the vacant physical possession of the tenanted premises to the landlady. However, no such undertaking was furnished by the petitioner. Despite having withdrawn the said revision petition; and despite not having furnished any undertaking qua vacation of the tenanted premises, the petitioner had approached Hon'ble the Supreme Court, by way of Special Leave Petition No. 4585 of 2021. However, the said SLP was dismissed by the Supreme Court, vide order dated 24.03.2021, by imposing costs of Rs.15,000/- for wasting the precious time of the Court.

3) When the SLP was pending before the Supreme Court, the petitioner had filed another application under Section 47, Order 21 Rules 97 to 101 read with Section 151 of the Code of Civil Procedure, asserting therein, that the petitioner could not be ordered to be evicted from the premises in question under the said eviction order because respondent - Sita Devi was not even the landlady and owner of the property in question. However, in the meantime, the said Sita Devi, the landlady and owner of the property has expired and her legal representatives were brought on record in the execution petition. The legal representatives of the Sita Devi

filed the reply to the objections of the petitioner. Further, while the objections were pending, the petitioner also made a prayer for registration of the FIR against the legal representatives of the landlady - Sita Devi and some other persons. The executing Court dismissed the said objections filed by the petitioner, vide order dated 06.04.2023, by holding that the executing Court cannot go behind and beyond the decree; and also cannot re-adjudicate upon any such issue which had already been disposed off by the predecessor Courts. The application for issuing directions to the concerned police to lodge an FIR against the respondents also stands dismissed. Now; through the present revision petition, the petitioner has challenged the order dated 06.04.2023 passed by the Civil Judge (Junior Division) Faridabad.

4) Arguing the case, counsel for the petitioner has submitted that since the said Lajja Rani Malhotra had already expired before the sale deed was executed in favour of Sita Devi, by the second decree G.P.A. Holder, therefore, Sita Devi was not the landlady and owner qua the tenancy. Therefore, the petitioner had rightly preferred the objections in execution under Section 47, Order 21 Rules 97 to 101 read with Section 151 of the Code of Civil Procedure; which were required to be decided as a civil suit. However, the Executing Court has not decided the same in the manner as prescribed in the Code of Civil Procedure. Since the executing Court has not done the same, therefore, the order passed by the executing Court deserves to be set aside and the execution proceedings deserve to be closed. To buttress this argument, counsel for the petitioner has relied upon a decision rendered by Hon'ble the Supreme Court in '*N.S.S. Narayana*

Sarma vs. M/s Goldstone Exports (P) Limited', ***AIR 2002 Supreme Court***

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5) Having heard counsel for the petitioner and having gone through the case file, this Court does not find any substance in the arguments raised by counsel for the petitioner. It is not even in dispute that the eviction petition stood decided against the petitioner and the eviction order has been upheld right upto Hon'ble the Supreme Court, where, his Special Leave Petition was dismissed with costs of Rs.15,000/-. Therefore, the order of the Rent Controller, which has been converted into the executable decree, could have been very well executed by the decree holder. Accordingly, Sita Devi, decree holder had rightly filed the execution petition against the petitioner. She having expired, her legal representatives have rightly been permitted by the executing Court to proceed further in the matter.

6) The main argument of counsel for the petitioner is that since the grantor of the General Power of Attorney stood expired before the execution of the sale deed in favour of Sita Devi; therefore, the person who executed the sale deed; had no authority to act under the power of attorney so as to execute the sale deed. However, the said argument cannot be permitted to be raised on behalf of the petitioner, who happened to be the only a tenant in the property in dispute. Qua him, the tenancy would go along with the title. Undisputedly, the registered sale deed qua the demised premises is in favour of Sita Devi, therefore, qua the tenant, she had validly entered as landlady. The petitioner is not even the competent to raise the dispute regarding the title; much less to speak in the execution proceedings, If at all some other person can raise the dispute regarding transfer of title in favour of Sita Devi on account of General Power of

Attorney having been elapsed, it could be the heirs of Smt. Lajja Rani. However, none of the heirs of Lajja Rani has even raised dispute qua title of Smt. Sita Rani. The petitioner is not even claiming that he had any right to inherit the estate of Lajja Rani Malhotra; as such. Hence, this argument raised by counsel for the petitioner is not tenable; and is liable to be rejected.

7) The next argument raised by counsel for the petitioner is that the objections were rightly filed under the provisions of Order 21, Rules 97 to 101 of the Code of Civil Procedure. However, counsel for the petitioner has miserably failed even on this aspect of the matter. The bare perusal of the provisions of Order 21, Rules 97 CPC makes it clear that the said provision is meant for the use of 'decree holder' only, in case he feels resistance in getting the possession and execution of the decree in his favour. Even under Order 21, Rule 99 CPC, any person 'other than the judgment debtor' or the person claiming under him is permitted to raise the objections in the execution. The petitioner, by any means, cannot be taken as any person other than 'the judgment debtor'. The petitioner is the only judgment debtor in the decree of eviction passed by the Rent Controller. Therefore, the provisions of Order 21, Rules 97 to 101 CPC are not even meant for the petitioner - judgment debtor. The petitioner being a tenant cannot even invoke Section 47 CPC so as to question title of the landlord. As such, the aforesaid judgment of the Apex Court, referred to by counsel for the petitioner is of no help in the present case. Filing of the application by the petitioner under the said provisions is nothing but a deliberate attempt to misuse the process of law, knowing fully well that the said provisions are not even meant for him. Although the petitioner was required to vacate

the said premises in compliance of the decree passed against him, still, instead of vacating the premises, he even asserted for registration of criminal case against the landlady and some other persons. Even this attempt on the part of the petitioner is nothing but an attempt for misusing the process of the Court.

8) In view of the above, finding no merits; the present petition is dismissed with costs, which is quantified at Rs.25,000/- and is ordered to be paid to the respondents. If the cost is not paid on or before 31.05.2023, the same is ordered to be recovered as arrears of land revenue.

9) Since the petitioner is habitual of misusing the process of Court and wasting time of the Court, by raising all kinds of absurd pleadings and legal pleas, therefore, to pre-empt him from doing so any further, it is ordered that the petitioner shall vacate the premises in question on or before 31.05.2023, failing which, the respondents shall be entitled to take possession of the same on or after 01.06.2023, by seeking police help; without requiring further orders from any Court.

10) It is further ordered that in case any items/articles are found lying in the premises in question on or after 01.06.2023, the same shall be deemed to have been forfeited in favour of the respondents who shall be entitled to appropriate the same as their own property.

(Rajbir Sehrawat)
Judge

15.05.2023
mohan bimbura

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No