

2023:PHHC:105958

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

ESA-41-2023 (O&M)

Date of decision: 11.08.2023

Manav Bansal

..Appellant

Versus

Kuldeep Bansal and another

.Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Kanish Jindal, Advocate for the appellant

ANIL KSHETARPAL, J (Oral)

1. The appellant herein, while claiming to be a tenant in possession filed objection against the delivery of possession, in a suit filed for possession, by way of specific performance of the agreement to sell. The decree was passed on 21.08.2009. The first and second appeal filed by the owner was dismissed. The Special Leave Petition preferred before the Supreme Court was also dismissed.

2. Learned counsel representing the appellant admits that all this while the defendant never claimed that the property is in the possession of the tenant. Rather he was defending the case on the ground that the property is the only property in his possession. When the sale deed has been executed in favour of the decree-holder after a prolonged litigation of nearly two decades, the decree-holder still awaits for the fruits of the decree. The petitioner claims to be in possession of the property as a tenant for the last 22 years. However, he has failed to produce any material, except certain receipts of payment of rent, in cash,

which can be prepared at any point of time. The Executing Court has recorded the following reasons for dismissing the objections:-

“a. First reason for dismissing the objections on account of maintainability thereof is that, in the body of his claim, objector has claimed himself to be tenant in the disputed property under JD Rashmi Rani, however, he has not mentioned any date, month or year from where his alleged tenancy with JD began.

b. The objection petition has been filed but the affidavit supporting his objections is conspicuously missing, with clear intent to save himself from any criminal proceedings from filing false affidavit.

c. When this court examined the objector on oath, he failed to give the house number, name and street of the area in which the house in dispute is situated and also failed to tell right surroundings of the disputed house, despite the fact that he is alleging himself as tenant in the disputed house since last 20-22 years. The relevant portion of his statement is mentioned as follows “I do not know the house number in which I am residing as tenant. I cannot tell the Mohalla/street in which I am residing, voluntarily said there is Raghu Chat Wala at the corner of street. On the Eastern side there is a house, but I do not know the owner of house. On the Western side there is IELTS centre. On the Northern side there is tuition/coaching centre. On the Southern side there is IELTS centre.” Hence, it is reasonably clear that the objections are completely frivolous and same seems to be maintained only to delay the proceedings of present execution and to deprive the decree holder from its fruit. A person who is allegedly residing as a tenant in disputed house since 20/22 years, does not even know the house number, name of the street or Mohalla in which the house is situated and even failed to give the correct surroundings of the house. This fact is clear from the sale deed of the disputed house got executed by way of process of court on 16.03.2022 that the house is bearing no. 1214, situated in Sant Ram Street Behroon Delhi Gate. On the Eastern side there is wall of Anand Bhawan, on the Western side there is 21 feet road, on the Northern side common wall of Achhru Ram and on the Southern side again wall of Achhru Ram. Similarly, perusal of copy of headnote of the plaint

filed by present objector against present JD regarding the same house reveals that the boundaries are same as mentioned above in the sale deed. Hence, it is clear that objector did not even know the surroundings of the disputed house. It prima facie reveals that he is not residing in the house in dispute as tenant and there is no actual tenancy whatsoever between him and JD.

d. Objector also said that he might be having a rent note of the disputed house and can produce the same after checking at his house, but no such rent note is produced in the court even though the case was adjourned yesterday on request of ld. Counsel for objector for today. Rather, during course of arguments, ld. Counsel for objector submitted that the tenancy was oral and there is no rent note.

e. Objector has claimed that decree has been obtained by decree holder in collusion with JD. However, these objections are not valid. Perusal of the record reveals that the JD has contested the civil suit to the tooth and nail as the suit was filed in the year 2002 and was decided on 21.08.2009. Thereafter, JD even filed appeal and the same was dismissed by Ld. District Judge, Sangrur on 25.10.2013. She did not stop there and filed one RSA no. 2246 of 2014 before Hon'ble High Court, which was dismissed on 06.01.2020. And she further filed SLP (civil) no. 4084/2022 before Hon'ble Supreme Court against order of Hon'ble High Court and even the same was also dismissed vide order dated 22.04.2022 of Hon'ble Apex Court. Hence, it is clear that JD fought the proceedings and contested the suit upto the highest court of this country, therefore, it is clear that there is no collusion whatsoever between decree holder and JD. Had there been any collusion, JD would not have fought the suit upto Hon'ble Apex Court.

f. What that is more interesting to note here is that from the very beginning JD is claiming that the disputed house is the only residential house for her and her family members and in case specific performance is granted to decree holder, her family would come on road. This fact is clear from certified copy of judgment dated 25.10.2013 passed by Ld. District Judge in appeal filed by JD. Perusal of para no. 18 of the judgment reveals that JD has taken the plea that it is only residential house available with her. Even before Hon'ble High Court she has taken the same plea and this fact is clear from judgment of

Hon'ble High Court at page no. 2 in RSA no. 4246 of 2014 that she is having the disputed house as only residential house for her and her family, therefore, relief of specific performance of agreement to sell could not have been passed against her. She did not even stop here and filed civil revision no. 2402 of 2021 before Hon'ble High Court against order dated 20.09.2021 passed by Ld. Predecessor of this Court, dismissing her objections in the present execution and para no. 4 of order dated 29.10.2021 passed by Hon'ble High Court in CR no. 2402 of 2021 reveals that she again took the plea that this is the only residential house which the JD owns and she is ready to refund the amount, but Hon'ble High Court again dismissed her objections vide said order. Therefore, on one hand JD is alleging from the very beginning that this is the only residential house available with her in which she along-with her family is residing, on the other hand she has allegedly issued rent receipts dated 09.03.2022 and 10.04.2022 in favour of present objector regarding the same house, admitting the objector as tenant. It clearly shows that present objections are nothing but collusion between JD and objector. On one hand, she is alleging the house as only residential house available with her in which her family is residing from the last many years and suddenly she is issuing rent receipt regarding the same house in favour of objector, when Ld. Predecessor of this Court got executed sale deed of the disputed house in favour of decree holder in the same month of March 2022. Therefore, it is clear that JD has prepared false rent receipts in order to save her house in favour of objector. Rather, collusion between JD and objector is apparent from the fact that on one hand JD has contested the present suit upto Hon'ble Apex Court and even filed revision in the present execution upto Hon'ble High Court in order to save allegedly her only single residential house, but on the other hand, she has been proceeded against ex parte in the civil suit filed by present objector against her regarding the same house, in which present objector is claiming his possession as tenant, this fact is clear from perusal of photocopy of order dated 03.10.2022 passed by the court of Sh. Harshbir Sandhu, PCS Ld. CJ(JD), Malerkotla in the said Civil suit, in which defendant is shown as ex parte. On one hand, she is contesting the present civil suit upto Hon'ble Apex Court and even contesting the present execution, suddenly she let herself proceeded

ex parte in the said civil suit filed by present objector, it shows clear collusion between both of them. Rather such kind of acts should be dealt with sternly at the hands of the court and even criminal action should be taken in normal circumstances, but at this stage, this court stops itself from issuing any directions. However, decree holder should be at liberty to launch any such proceedings, if so desires against JD and objector.

g. On one hand, objector has alleged that he is residing in the disputed house with his family from the last 20-22 years, but on the other hand he has himself placed on record self attested copy of his Aadhar Card in which his address is of some other house i.e. house no. 1103, Sajida Colony, near Old ITO Malerkotla, whereas the disputed house is situated at completely different area/colony and having different house number.

h. It is also pertinent to mention here that objector has only placed on record rent receipts of the year 2022 and the first rent receipt is dated 09.03.2022 and second of dated 10.04.2022 and both these receipts strangely coincide with the month i.e. March 2022, in which the sale deed was got executed in favour of decree holder by court by way of appointment of Local Commissioner. There is no old rent receipt and there is also no new rent receipt after these two months. It is clear that when the sale deed was got executed by this Court in March 2022, these receipts have been prepared just to create false evidence and to halt the execution proceeding. Had there been any real tenancy between JD and objector, what stop him from producing the rent receipts from the last 20 years, because he himself stated that he is tenant in the house in dispute from the last 20-22 years. As it was very convenient for the JD and objector to prepare such rent receipt of recent time after the sale deed has been executed in favour of decree holder and when JD was left with no other option to delay the proceedings further.”

3. The matter has once again been examined by the First Appellate Court. The First Appellate Court did not find any merit in the objection petition. Thereafter, this execution second appeal has been

filed to assail the correctness of the concurrent orders passed by the courts below.

4. Learned counsel representing the appellant submits that the Executing Court was bound to decide the objections after framing the issues.

5. This Court has considered the submissions. It may be noted here that the objector was examined by the Executing Court on oath. Hence, he was granted the opportunity to produce material in support of his objections. Every execution petition is required to be decided expeditiously. Experience tells us that more often the objections are filed only to delay the execution of the decree.

6. Therefore, it would not be appropriate to hold that every third party objection should be decided only after framing the issues.

7. Keeping in view the aforesaid facts, there is no ground to interfere with the concurrent orders passed by the courts below. Hence, dismissed, subject to payment of Rs.50,000/- as costs, which shall be recovered by the Executing Court in order to compensate the decree-holder.

8. All the pending miscellaneous applications, if any, are also disposed of.

11.08.2023

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE