

IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH

134

CR-5520-2023

Date of Decision : 19.09.2023

Yogesh

.....Petitioner

Versus

Vijay Sharma and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR**

Present : Ms. Vibhuti Narania, Advocate for the petitioner.

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**NAMIT KUMAR, J. (ORAL)**

1. The instant revision petition has been preferred by the petitioner impugning the order dated 25.08.2023 (Annexure P-6) passed in execution petition No.EXE-319-2021 titled as 'Vijay Sharma Vs. Subhash Kumar' whereby learned Rent Controller, Pathankot has dismissed the 3<sup>rd</sup> party objection filed by the petitioner.

2. Briefly stated the facts of the case as pleaded in the petition are that Devi Dayal and Krishna Sharma, parents of respondents No.1 to 3, were the owners of doubled storey building comprising of shops in the front part abutting the road and street on the western and southern sides and house on the rear part. After the death of their parents, respondents No.1 to 3 and their another sister Kusum Lata inherited the entire building being successor-in-interest. The shop in question was rented out to respondent No.4-Subash Kumar @ S.K. Bhandari by Devi Dayal on monthly rent of Rs.320/- vide rent note dated 10.02.1988 executed by respondent No.4 and there has been increase in rent from time to time. On 16.02.2016, respondents No.1 to 3 have filed eviction

petition against LR's of respondent No.4 (since deceased) on the ground that respondent No.4 has not paid the rent since April 2020 after the death of their father Devi Dayal and on the ground of bona fide necessity. The said eviction petition has been allowed by learned Rent Controller, Pathankot vide judgment dated 05.02.2020 whereby LR's of respondent No.4/tenants have been directed to hand over the vacant possession of the demised premises to respondents No.1 to 3/landlord within a period of two months. Against the said judgment dated 05.02.2020, the LR's of respondent No.4 have filed an appeal on 13.03.2020 which is still pending consideration before learned Appellate Authority, Pathankot. During pendency of the appeal, respondents No.1 to 3 have filed execution petition on 01.12.2021 before learned Executing Court. When the abovesaid proceeding came into the knowledge of the petitioner then he filed 3<sup>rd</sup> party objection to the execution of order dated 05.02.2020 which has been dismissed by learned Rent Controller, Pathankot vide impugned order dated 25.08.2023. Aggrieved against the said order, the petitioner has preferred the instant revision petition.

4. Learned counsel for the petitioner submits that Subhash Kumar @ S.K. Bhandari/JD expired during the pendency of the eviction petition leaving behind two sons namely Yogesh and Deepak and widow Shashi Bhandari but respondents No.1 to 3/DH only impleaded Shashi Bhandari and Deepak Bhandari as legal heirs of Subhash Kumar @ S.K. Bhandari and did not implead the petitioner, son of Subhash Kumar @

S.K. Bhandari, who is in actual and physical possession of the shop in question. When the petitioner came to know about the eviction petition and execution application filed by respondents No.1 to 3, he filed 3<sup>rd</sup> party objection to the execution of the order dated 05.02.2020 passed by learned Rent Controller, Pathankot. The petitioner is in possession of the demised property and without making him as a party before the learned Executing Court, warrant of possession has been issued. The Executing Court vide impugned order dated 25.08.2023 has dismissed the 3<sup>rd</sup> party objections filed by the petitioner without appreciating the evidence on record and also without considering the facts and circumstances of the present case. Therefore, the present revision petition may be allowed and impugned order dated 25.08.2023 may be set aside.

5. I have heard learned counsel for the petitioner and perused the relevant documents.

6. The concluding para of impugned order dated 25.08.2023 passed by learned Rent Controller, Pathankot, reads as under :-

*“3. The respective counsels heard. Case file gone through minutely. The applicant/third party has filed third party objections in this present execution application that the applicant Yogesh who is actually running his business after the death of his father and he was not intentionally implead as a applicant. Further, it is prayed that the deceased father of the applicant had been paying rent to Kusum Lata who is one of the co-owner of the shop in dispute and had been receiving rent of the shop in dispute from the respondent deceased Sh. Subhash Kumar i.e. father of the applicant and after his death said Kusum Lata is still receiving the rent from applicant from the said shop.*

*I am of the view that the objections filed by the applicant/third party is not tenable at all that*

*applicant/third party has no knowledge regarding the eviction proceedings in which on dated 05.02.2020 the respondents were directed to hand over the vacant possession the shop in dispute as the applicant Yogesh is the son of the actual respondent namely Subhash Kumar. Further, the objections of the applicant/third party is also not maintainable that his father namely Subhash Kumar has been paying rent to Kusum Lata who is the one of the co-sharer of the shop in dispute as this defence is available to the respondent/JD at the time of eviction proceeding which is decided on merits on 05.02.2020 and in the execution proceeding the court has to follow the judgment and decree. I am of the view that third party objection is only filed just to frustrate the execution proceeding. So, objections filed by applicant/third party stands dismissed without any merits.”*

7. Admittedly in the present case, the eviction petition was filed by respondents No.1 to 3 on 16.02.2016 in which the petitioner was not made a party. The said eviction petition was allowed on 05.02.2020 and the LRs of respondent No.4 were directed to vacate the demised premises within a period of two months. Thereafter, against the said order, appeal was filed by LRs of respondent No.4 on 13.03.2020 and in the said appeal again the petitioner was not made a party by LRs of respondent No.4, which is still pending before the learned Appellate Authority, Pathankot. During the pendency of the said appeal execution application has been filed by respondents No.1 to 3 on 01.12.2021. It is not believable that the petitioner, who is real son of respondent No.4- Subhash Kumar @ S.K. Bhandari, has no knowledge about the eviction petition. The matter is pending since 2016 and the petitioner never appeared before the Court below even for once in nearly seven years and suddenly, he filed 3<sup>rd</sup> party objection dated 29.03.2023 to the

execution of the order dated 05.02.2020 in connivance with his brother and mother with the sole intent to abuse the process of law and just to delay the process of warrants of possession against the judgment debtor. Therefore, the 3<sup>rd</sup> party objection filed by the petitioner has rightly been rejected by learned Rent Controller, Pathankot.

8. In view of above, there is no illegality or infirmity in the impugned order dated 25.08.2023 passed by learned Rent Controller, Pathankot and needs no interference by this Court.

9. Finding no merit in the instant revision petition, the same is consequently, dismissed.

19.09.2023

*Kothiyal*

(NAMIT KUMAR)  
JUDGE

Whether Speaking/reasoned  
Whether Reportable

Yes/No  
Yes/No