

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No.2104 of 2024 (O&M)
Reserved on : 24.04.2024
Date of Decision : 29.04.2024

M/s Parkash Jewellers through its Proprietor Anil ParkashPetitioner

VERSUS

Paramjit KaurRespondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. K.S. Dadwal, Advocate and
Ms. Neha Jain, Advocate for the petitioner.

Mr. Harsh Kinra, Advocate for the respondent.

ALKA SARIN, J.

1. The present revision petition has been filed by judgment-debtor (tenant-petitioner herein) challenging the order dated 27.03.2024 whereby three applications filed by it herein have been dismissed. The first application was for appointment of legal guardian/next friend of the decree-holder, Paramjit Kaur (landlord-respondent herein). The second application was for adjourning the matter *sine die* till such appointment. The third application was for permitting the tenant-petitioner to deposit the arrears of rent. Vide the impugned order dated 27.03.2024 all the applications filed by the tenant-petitioner were dismissed.

2. Before advertng to the present case, a few facts may be noticed. On 23.05.2014 Paramjit Kaur, landlord-respondent herein, filed an ejectment petition on the ground of arrears of rent and bonafide personal necessity. It is apt to note that the property stands in the name of Paramjit

Kaur. Vide order dated 19.01.2018 the Rent Controller assessed the provisional rent and fixed 19.03.2018 for payment of rent. The said order was challenged by the tenant-petitioner before the Appellate Authority, which dismissed the appeal vide order dated 01.09.2018. The said order was challenged in CR-7444-2018 before this Court. Meanwhile, an application was filed by the landlord-respondent for eviction of the tenant-petitioner on account of non-deposit of provisional rent. The same was dismissed by the Rent Controller vide order dated 19.04.2022. The said order dated 19.04.2022 was challenged before this Court by filing CR-2420-2022, which was allowed vide order dated 27.09.2023 and the tenant-petitioner herein was directed to hand over the vacant possession of the property within a period of three months along with arrears of rent and ancillary charges. SLP No.26947 of 2023 challenging the said order dated 27.09.2023 was filed by the tenant-petitioner which was dismissed vide order dated 14.12.2023. It is apt to note that all these proceedings were pursued by the landlord-respondent herself. On 15.01.2024 an execution petition was filed on behalf of Paramjit Kaur by her son, namely, Kulwinder Singh as next friend. On 26.02.2024 an application was filed by the tenant-petitioner for appointment of a legal guardian/next friend of the decree-holder Paramjit Kaur (landlord-respondent). Another application was filed for adjourning the execution *sine die* till appointment of a legal guardian and the third application was filed for giving permission to deposit the arrears of rent. All three applications were dismissed vide the impugned order dated 27.03.2024. Hence, the present petition.

3. Learned counsel for the tenant-petitioner would contend that as per provisions of Order XXXII Rule 15 of the Code of Civil Procedure,

1908, it is incumbent on the Court to hold an enquiry as the landlord-respondent was not adjudged as a person of unsound mind. In support of his arguments he has relied upon judgment of the Hon'ble Supreme Court in the case of **Kasturi Bai & Ors. vs. Anguri Chaudhary [2003(1) RCR (Civil) 765]** and that of this Court in the cases of **Dilbagh Singh vs. Sawinder Kaur [2011(13) RCR (Civil) 379]**, **Pirthi Pal Singh vs. Jagtar Singh & Ors. [2019(3) PLR 144]** and **Harjinder Singh vs. Nachhattar Kaur [1991(2) RRR 499]**. Learned counsel for the tenant-petitioner would further contend that the application for adjourning the matter *sine die* and for depositing of rent have also been dismissed arbitrarily by the Executing Court.

4. *Per contra* learned counsel for the landlord-respondent would contend that the landlord-respondent is in a state of comatose and a certificate by the doctor has also been appended. Learned counsel for the landlord-respondent would further contend that the petition could have been filed through her next friend and that only in case of unsoundness of mind of the landlord-respondent would the requirement of appointing a legal guardian after enquiry by the Court be necessary. In support of his arguments he has relied upon judgment of the Hon'ble Supreme Court in the case of **Nagaiah & Anr. vs. Smt. Chowdamma (dead) by LRs & Anr. [2018(2) RCR (Civil) 617]** and that of this Court in the cases of **Jarnail Singh & Ors. vs. Smt. Naranjan Kaur & Ors. [2011(2) RCR (Civil) 215]**, **Lilu Ram vs. Kapur Singh & Ors. [2018(3) Law Herald 1982]**, **Rajvir Kaur vs. Sehajpreet Singh (minor) through next friend & uncle Malkit Singh & Anr. [2017(5) RCR (Civil) 314]**.

5. I have heard learned counsel for the parties.

6. In the present case the tenant-petitioner has lost upto the Hon'ble Supreme Court and now in the execution proceedings it is filing applications apparently to delay the proceedings. The applications for adjourning the matter *sine die* and for deposit of arrears of rent have rightly been dismissed by the Executing Court. Once the eviction of the tenant-petitioner was ordered on the ground of non-payment of rent assessed as provisional rent, the said application was rightly not entertained and the tenant-petitioner was also directed to pay the arrears of rent and ancillary charges. It has rightly been held by the Executing Court that the decree-holder was entitled to the entire payment of Rs.13,60,033/- as arrears w.e.f. 07.03.2010 @ Rs.4,500/- per month alongwith interest and costs as adjudicated by the Rent Controller, Jalandhar. Since the said order has already been upheld by the Hon'ble Supreme Court vide order dated 14.12.2023 hence no fault can be found with the order passed by the Executing Court dismissing the said applications.

7. The judgment of the Hon'ble Supreme Court in the case of **Nagaiah** (supra) relied upon by learned counsel for the landlord-respondent is a case under the Hindu Minority and Guardianship Act, 1956 and hence would not have the applicability to the present case. The judgment relied upon by learned counsel for the landlord-respondent in the case of **Jarnail Singh** (supra) is also a case where the suit was filed through next friend of the plaintiff who was stated to be of unsound mind. Similar is the case in the judgments of **Lilu Ram** (supra) and **Rajvir Kaur** (supra).

8. Hon'ble Supreme Court in the case of **Kasturi Bai** (supra) has held that under Order XXXII Rule 15 CPC the Court would not appoint a guardian without holding an enquiry. Similar is the law laid down in the

cases of **Dilbagh Singh** (supra), **Pirthi Pal Singh** (supra) and **Harjinder Singh** (supra).

9. In the present case a medical certificate has been appended certifying that the landlord-respondent was admitted in Medanta Hospital, Gurugram with Post Epileptic Coma on 03.09.2022 and was discharged on 30.11.2022 and presently she is admitted in Doaba Hospital, Jalandhar since 01.12.2022. It has further been stated that tracheostomy has been done for her respiratory care and she has been put on a feeding tube. The Executing Court keeping in view the provisions of Order XXXII Rule 15 CPC as well as the judgment of the Hon'ble Supreme Court in the case of **Kasturi Bai** (supra) ought to have conducted an enquiry in accordance with law. Though it is apparent that the tenant-petitioner is taking the benefit of technicalities and trying to delay the proceedings, however, the procedures cannot be given a go-by and hence an enquiry ought to have been held by the Executing Court.

10. The scope of an inquiry under Order XXXII Rule 15 CPC was discussed by a Division Bench of the Bombay High Court in **Somnath Dnyanoba Mahapure vs. Tipanna Ramchandra Jannu [AIR 1973 Bom 276]** where it was held that :

“18. The above discussion clearly leads to the logical conclusion that when the plaint is being examined for the purpose of admission, if it contains a statement as required by cl. (d) of r. 1 of O. VII that the plaintiff is a person of unsound mind and that a next friend is suing on his behalf, the Court must at once hold an inquiry. It is the duty of the Court to do so, and it is not necessary

for the next friend to make a separate application for that purpose. This inquiry should ordinarily include the calling of the plaintiff himself and questioning him in Court. If the Court entertains doubt about the mental capacity or the soundness of his mind, it is open to the Court to take further assistance in the form of medical examination and the evidence of the doctor under whose observations the plaintiff may be kept. The quantum and extent of inquiries must be left in each case to the circumstances prevailing. There may be a plaintiff who on immediate view may appear to be a person of unsound mind, and the Court may not need much evidence beyond recording of the questions put to and the answers given by the person concerned. There can be other cases which are not so clear and more evidence may be necessary. However, apart from the total extent of the evidence that might be led, we would suggest that as a matter of strong commonsense approach, the plaintiff who is alleged to be of unsound mind should be invariably called for being questioned when the case falls under the second part of r. 15 of O. XXXII. This inquiry is made for the purpose of recording a finding by the Court that the plaintiff is a person of unsound mind, or a person mentally so infirm as incapable of protecting his own interests. The provisions of r. 15 of O. XXXII make it possible for a next friend to sue on

behalf of an adult person as a next friend only when the person is either so adjudged by a Court of competent jurisdiction, or if not so adjudged, is found by the Court on inquiry to be so. That is the foundation, prima facie, for a next friend to avail and proceed with the suit. Such inquiry is obviously an ex parte inquiry for the Court to give a finding and to admit the plaint and issue the process to the other side.”

It may also be noted here that a person may not be adjudged as of unsound mind yet the Court may nevertheless consider it appropriate to appoint a guardian ad litem under Order XXXII Rule 15. However, the Court is not bound to make a rigorous or formal enquiry as contemplated by the Lunacy Act, 1912 or the Mental Health Act, 1987 or the Mental Healthcare Act, 2017 and is competent to pass an order as soon as it is satisfied as to the party's mental competence. There has to be a pragmatic approach by the Court to satisfy the requirements and the need to protect the interest of the person concerned. There is a vast difference between mental unsoundness and incapacity by reason of mental infirmity, the latter being of a lesser degree.

11. In view of the above and in view of the law laid down by the Hon'ble Supreme Court in the case of **Kasturi Bai** (supra), the present revision petition is partly allowed. The matter is remanded to the Executing Court which shall at once conduct an enquiry as contemplated under Order XXXII Rule 15 CPC in accordance with the law. However, the enquiry shall be completed within a period of 15 days from the receipt of copy of this order. It is further directed that the Executing Court shall not grant any

unnecessary adjournments and conclude the matter as expeditiously as possible.

12. Disposed off in the above terms. Pending applications, if any, also stand disposed off.

**(ALKA SARIN)
JUDGE**

29.04.2024

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NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO