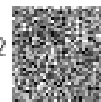


IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

132

2024:PHHC:063472



CR-3546-2023

Date of decision: 07.05.2024

SHAMSHER KAUR@SHAMSHER KAUR DHILLON

..Petitioner

Versus

GURU HARGOBIND SAHIB SEWA SOCIETY REGD. & ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

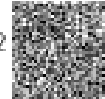
Present: Mr. Ashish Aggarwal, Sr. Advocate
with Mr. Karan Singla, Advocate
and Ms. Aashna Aggarwal, Advocate
for the petitioner.

Mr. Paras Jagga, Advocate
for respondents.

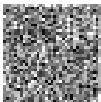
ANIL KSHETARPAL, J(Oral)

1. The petitioner before this Court is a decree holder. In a suit for mandatory injunction filed by the petitioner against her licensee, a decree for delivery of possession was passed on the basis of settlement between the parties. The judgment debtor was required to hand over the possession on 31.03.2021. The respondent filed objection petition on 09.01.2023 claiming that it is possession of the shop since August, 2019, when the decree holder and the judgment debtor handed over possession to them. The Executing Court has culled out the following issues while calling upon the parties to lead evidence:-

*“1. Whether the objector is in legal possession of the suit property with the consent of the Decree Holder? OPO
2. Whether the objection petition is false, frivolous and is result of collusion of Bhagatdeep Singh, JD? OPDH
3. Relief.”*



2. The correctness of such order is challenged before this Court.
3. The learned Senior counsel representing the petitioner submits that the respondent-Society is using the same GST number, which was being used by the judgment debtor. He submits that the Executing Court before settling the issues was required to record a *prima facie* finding that there is some substance in the objections filed by the respondents. While relying upon the judgment passed by the Supreme Court in **Rahul S. Shah Vs. Jinendra Kumar Gandhi and others, (2021) 6 SCC 418**, he submits that the issues while calling upon the parties to lead evidence before the Executing Court should be rare and in exceptional cases.
4. Per contra, the learned counsel representing the respondents submits that the Executing Court has only framed issues and while calling upon the parties to lead evidence. Hence, no prejudice is caused to the petitioner. In support of his submissions, he relies upon the judgment passed in **Jini Dhanrajgir and another Vs. Shibu Mathew and another, 2023 AIR (SC) 2567**.
5. This Court has considered the submissions of the learned counsel representing the parties.
6. On a Court question “whether the respondents have any document to prove that the decree holder and the judgment debtor jointly handed the possession of the premises to the respondent”?, he submits that all the documents have been attached with the objection petition.
7. This Court has carefully read the objection petition. The respondent has annexed copy of the resolution of the Society, photograph and pamphlet offering to sell medicine and other groceries at subsidised rate.



8. Before settling the issues, the Executing Court is required to *prima facie* form an opinion that a triable issue requires adjudication while deciding the objections of the third party. The Supreme Court has laid down that issue should be framed only in rare and exceptional cases, however, from the reading of the impugned order, it is evident that the Executing Court has failed to record any such *prima facie* observations.

9 Keeping in view the aforesaid facts, the revision petition is allowed. The impugned order passed on 10.04.2023, is set aside while requesting the Executing Court to re-examine the entire matter and pass fresh order in accordance with law within a period of next two months, from today, positively.

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

May 07th, 2024

Ay

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No