

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Civil Revision No.6959 of 2023
Date of Decision: 18.04.2024

Dharamshala Suthre Shah
...Revisionist-Petitioner
Versus
Surinder Kumar (deceased) through LRs & Others
...Respondents

CORAM: HON’BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Argued by:- Mr. Arihant Jain, Advocate and
Mr. Kanish Jindal, Advocate,
for the revisionist-petitioner.

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MEENAKSHI I. MEHTA, J.

By filing the instant revision-petition under Article 227 of the Constitution of India, the petitioner-Objector-Dharam Shala (here-in-after to be referred as ‘the Objector’) has laid challenge to the order (Annexure P-7) as passed by learned Civil Judge (Senior Division), Jalandhar, (for short ‘the Executing Court’) on 21.10.2023 in *Execution Petition No.917 of 2019* titled as ‘*Surinder Kumar (since deceased) through LRs versus Shiv Pal (since deceased) through LRs and anr*’, whereby the Objection-Petition (Annexure P-5) as preferred by it (Objector), has been dismissed.

2. Bereft of the unnecessary details, the facts, emanating from the perusal of the record and resulting in the filing of the present revision-petition, are that respondent No.1-landlord (since deceased and represented through his legal representatives who shall, here-in-after, be referred as ‘the LRs of the

landlord') filed the Rent Petition against respondents No.2 and 3-Judgment Debtors (here-in-after to be referred as 'JDs No. 1 and 2' respectively) for seeking their eviction from the demised shop on the grounds of non-payment of rent by JD No.1 and the sub-letting of this shop by him to JD No.2 without his (landlord's) consent. The above-mentioned Rent Petition was allowed by the Rent Controller vide the order Annexure P-3 passed on 05.12.2017 and the appeal moved by JD No.2 to assail the afore-said eviction order was also dismissed by learned Appellate Authority vide the judgment as rendered on 21.09.2019. Thereafter, the LRs of the landlord had filed the above-referred Execution Petition and the Objector filed the Objection-Petition (Annexure P-5) therein, which has been dismissed vide the impugned order.

3. I have heard learned counsel for the petitioner-Objector in the instant revision-petition, at the preliminary stage and have also perused the record carefully.

4. Learned counsel for the Objector has contended that the Objector is the owner of the demised shop and it had rented out the same to JD No.2 and respondent No.1 had no right or title in this shop and thus, no relationship of the landlord and tenant did ever exist between the said respondent, i.e the alleged landlord and JD No.2 but he (respondent No.1) filed the afore-said Rent Petition by falsely claiming himself to be the owner-landlord of the above-mentioned shop and the Objector was not a party to the afore-referred Rent Petition and therefore, the eviction order passed by the Rent Controller and the judgment as handed down by the Appellate Authority, upholding the said order, have no binding effect on the rights of the Objector and moreover, JD No.2 has already handed over the possession of the demised shop to the

Objector, a third party to the *lis* and it being so, the above-said eviction order is not executable against it (Objector) but while passing the impugned order, the Executing Court has not taken the afore-discussed crucial aspects of the matter, into consideration and has also not followed the procedure, prescribed under Order 21 Rules 98 and 100 CPC and hence, the said order is not legally sustainable and deserves to be set-aside. To buttress his contentions, he has placed reliance upon the verdict as rendered by Hon'ble Supreme Court in **“Jini Dhanrajgir & Anr Vs. Shibu Mathew & Anr, 2023 AIR (SC) 2567”**.

5. However, the above-raised contentions do not hold much water because as regards the plea qua JD No.2 being a tenant in the demised shop under the Objector, it is pertinent to mention here that JD No.2 had taken/raised this plea in the written-statement (Annexure P-2) as filed by him in the afore-said Rent Petition and the Rent Controller and the Appellate Authority have duly considered and dealt with the same and have concurrently held that he (JD No.2) had not been able to prove the above-referred plea/version.

6. So far as the dispute regarding the ownership over the demised shop is concerned, the same can be decided by the Civil Court and the Rent Controller and the Court executing the orders passed by the Rent Controller, have no jurisdiction to decide it and even otherwise, it has specifically been observed in the afore-referred eviction order and the judgment that the above-said dispute had already been adjudicated by the Competent Court vide the judgment, as passed on 19.04.2005 in a previously filed Civil Suit.

7. As regards the contention about JD No.2 having handed over the possession of the demised shop to the Objector, it is again worth-while to point it out here that both the Courts below have considered the same and

have observed that JD No.2 had not adduced/led any evidence on the record to substantiate/establish the afore-discussed fact. To add to it, in Para No.1 in the preliminary objections in his written-statement (Annexure P-2), JD No.2 has categorically asserted the factum of his possession over the demised shop and though, in the Objection-Petition, the Objector has pleaded that this shop is in possession of the persons to whom the same was given by it (Objector) but the fact remains that throughout therein, it has neither disclosed the names of such persons nor the date of JD No.2 having handed over the possession of the said shop to it, as claimed by it and JD No.2 as well.

8. Even if for the sake of arguments, it is presumed that JD No.2 had delivered the possession of the demised shop to the Objector, even then the facts and circumstances, as discussed in the preceding para, unequivocally lead to the only irresistible conclusion to the effect that the possession of the said shop had been so delivered by him (JD No.2), during the pendency of the Rent Petition. Order 21 Rule 102 CPC provides as under:-

“Nothing in Rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of such person.”

In view of the afore-quoted provisions, it becomes crystal clear that the plea of non-compliance of the procedure, as laid down under Order 21 Rules 98 and 100 CPC, is not available to the Objector.

9. The observations made by the Apex Court in **Jini Dhanrajgir and anr (supra)**, are of no avail to the Objector as the facts and circumstances of the above-cited case are quite distinguishable from those of the present one

because in the afore-said case, the parcels of property in dispute were claimed to have been transferred to the respondents after the dismissal of the Suit and prior to the restoration thereof when there was no pending '*lis*' and therefore, it had been observed that it would be most appropriate for the Executing Court to determine the question as to whether any of the transfers in favour of the respondents would attract Rule 102 of Order 21 CPC whereas in the instant case, as observed earlier, even if JD No.2 is presumed to have actually handed over the possession of the demised shop to the Objector, then he had done so during the pendency of the Rent Petition.

10. As a sequel to the fore-going discussion, it follows that the impugned order does not suffer from any illegality, irregularity, infirmity or perversity so as to warrant any interference by this Court. Resultantly, the revision-petition in hand, being devoid of any merit, stands dismissed.

18.04.2024
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(MEENAKSHI I. MEHTA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>Yes</i>