

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

EFA No.1 of 2011(O&M)

Reserved on: 02.07.2025

Date of Order:08.07.2025

Kanwarjit Singh

..Appellant

Versus

Vikram Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjiv Gupta, Advocate
for the appellant.

Mr. Saurabh Bajaj, Advocate
for respondent no.1.

Mr. Amit Jain, Sr. Advocate, with
Mr. Varun Prakash, Advocate
for respondent no.2.

ANIL KSHETARPAL, JUDGE (Oral)

I. BRIEF FACTS OF THE CASE

1. Through this Execution First Appeal, the decree holder assails the correctness of the order passed on 30.10.2010, by the Additional District Judge, Kurukshetra, while allowing the objections petitions filed by the Judgment Debtor as well as the third party objector, namely, Manak Chand resulting in dismissal of the execution petition.

2. In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed.

3. Kanwarjeet Singh claims that on 15.07.2007, an arbitration award was passed in his favour and against Vikram Singh (Judgment

Debtor) with respect to the specific performance of an agreement to sell of agricultural land measuring 109 kanals and 5 marlas. Manak Chand is purchaser of the property by virtue of a registered sale deed executed by Vikram Singh(JD) on 27.11.2007, after receipt of total sale consideration of Rs.1,09,25,000/- out of which Rs.94,25,000/- was paid through demand draft.

4. For better comprehension, the parties shall be referred to by their respective names.

5. Kanwarjeet Singh filed the execution petition claiming that Arbitral Tribunal has given the award in his favour on 15.07.2007, while directing the Judgment Debtor (Vikram Singh) to execute the sale deed on receipt of balance sale consideration. Vikram Singh was owner of 109 kanals 05 marlas land. It is claimed by Kanwarjeet Singh that on 14.06.2006, Vikram Singh had agreed to sell the land measuring 109 kanals and 05 marlas in his favour at the rate of Rs.7,00,000/- per acre on receipt of the earnest money of Rs.46,00,000/- in cash, for a total sale consideration of Rs.95,59,375/-. As per the agreement to sell, the sale deed was to be executed and registered on 25.09.2006. However, on 20.09.2006, the date for execution of the sale deed was extended to 02.04.2006 and additional payment of Rs.42,00,000/-, in cash, was paid. However, the said date was extended on receipt of Rs.42,00,000/-. It is alleged by the decree holder that Vikram Singh failed to honour the agreement to sell and arbitration agreement was executed on 31.03.2007 between the parties.

6. The parties agreed to refer the dispute to an "Arbitral Tribunal" consisting of following persons:-

"1. Rajinder Singh son of Dhool Singh, resident of village

Ajrana Kalan, District Kurukshetra

2. *Karan Pal son of Jagmal Singh, resident of village Ajrana Kalan, District Kurukshetra.*
3. *Bhushan Lal son of Om Parkash, resident of village Ajrana Kalan, District Kurukshetra.*
4. *Isham Singh son of Raghbir Singh, resident of village Raison, District Karnal; and*
5. *Jeeta Ram son of Munshi Ram, resident of village Barna, District Kurukshetra”.*

7. It is claimed that in view of the arbitration agreement dated 31.03.2007, the said arbitrators entered upon the reference and ultimately the award came on 15.07.2007. It was found that out of total sale consideration of Rs.95,59,375/-, Kanwarjeet Singh has already paid Rs.88,00,000/-, hence Vikram Singh shall execute the sale deed in favour of Kanwarjeet Singh, upon receipt of the balance sale consideration.

8. There is another set of facts that is relevant for the decision of the case. Vikram Singh on receipt of total sale consideration of Rs.1,09,25,000/-, sold the property in favour of Manak Chand (third party objector) vide registered sale deed executed on 27.11.2007, out of which Rs.94,25,000/- was received by the demand draft, whereas Rs.15,00,000/- was received in cash. On the basis of the sale deed, mutation was sanctioned in favour of Manak Chand, on 08.01.2008. Initially, in the execution petition, JD failed to enter appearance and was proceeded against ex-parte. However, Manak Chand filed the third party objection under Order 21 Rule 97 of the Code of Civil Procedure (hereinafter referred to as 'the CPC'). Thereafter, Vikram Singh also filed an application for setting

aside the ex-parte order which was allowed and he also filed the objection petition claiming that in fact Kanwarjeet Singh, who is his relative, assured that he had high connections in the Police as well as fair understanding of court proceedings, hence, he would help him in getting the land which has been sold back. In this pretext, Kanwarjeet Singh took a sum of Rs.15,00,000/- from Vikram Singh in the court premises. However, after a passage of one year, he could not get the sale deed cancelled, hence, he demanded refund of Rs.15,00,000/- which was ignored by the Kanwarjeet Singh. Thereafter, Vikram Singh became suspicious and he got aware that various documents had been executed to play fraud.

II. **REASONS RECORDED BY THE EXECUTING COURT**

9. From the pleadings of the parties, the following issues were framed by the Executing Court:-

- “1. *Whether agreement to sell dated 14.6.2006 was executed by the JD in favour of DH and earnest money of Rs.46,00,000/- was received by the JD as alleged?OPDH*
2. *Whether date for execution and registration of the sale deed was extended to 2.4.2007 on 20.9.2006 by mutual consent of the JD and the DH and additional earnest money of Rs.42 lacs was paid, as alleged?OPDH*
3. *If issue no.1 and 2 are proved, whether the DH remained ready and willing to perform his part of the agreement to sell, as alleged?OPDH*
4. *Whether arbitration agreement dated 31.3.2007 was executed between the JD and DH to refer the dispute to arbitration?OPDH*
5. *If issue no.4 is proved, whether the award under execution is legal and valid and enforceable, as alleged?OPDH*

6. *Whether objector Manak Chand is bonafide purchaser for a valuable consideration of the land in question vide registered sale deed no.5831 dated 27.11.2007 from the JD ?OP objector Manak Chand*
 7. *Whether there is collusion between the JD and DH to defraud objector Manak Chand and the court is manipulation the arbitration proceedings and filing the present execution? OPD objector Manak Chand.*
 8. *Relief.”*
10. The Executing Court upon appreciation of the evidence, recorded the following findings of fact:-
- (A) Kanwarjeet Singh is father's brother's son of Vikram Singh and they are colluding with each other in order to defraud Manak Chand who is a bonafide purchaser.
 - (B) Kanwarjeet Singh has failed to prove that he had wherewithal to pay the huge cash amount of Rs.88,00,000/-(Rs.46,00,000/- on 14.06.2006 and Rs.42,00,000/- on 20.09.2006).
 - (C) Vikram Singh while appearing as RW1, has admitted execution of the sale deed in favour of Manak Chand but claimed that Kanwarjeet Singh took Rs.15,00,000/- and got his signatures on blank papers with assurance of getting the land back from Manak Chand.
 - (D) Kanwarjeet Singh is already alleged to have paid Rs.1,08,00,000/- which is much more than the sale amount of Rs.95,59,375/- but he failed to prove the source of the aforesaid amount.
 - (E) The execution of the agreement to sell on 14.06.2006, is

not proved as neither the scribe has been examined nor stamp vendor from whom the stamp papers were allegedly purchased has been examined. Notary public has also not made any entry in his register while notarizing the alleged agreement to sell.

(F) Kanwarjeet Singh has attested as witness two sale deeds Ex.RC and Ex.RD, dated 23.12.2008 and 24.10.2008, executed in favour of Hema Rani, sister of Vikram Singh which proves that the relationship between Kanwarjeet Singh and Vikram Singh was cordial, despite the so called dispute over agreement to sell.

(G) Moreover, it is surprising that out of the total land measuring 109 kanals and 05 marlas, Vikram Singh entered into the agreement to sell in favour of Subhash with respect to 8 kanals land which was attested as a witness by Kanwarjeet Singh. It shows that there was no agreement to sell on 14.06.2006.

11. Ultimately, the Executing Court came to conclusion that no agreement to sell was executed on 14.06.2006 and all the documents have been pre-dated/ante dated and whole story has been concocted to avoid the sale deed in favour of Manak Chand.

III. **ARGUMENTS ADDRESSED:-**

12. This Bench has heard the learned counsel representing the parties and with their able assistance perused the paper book along with the scanned copy of the lower court record.

13. The learned counsel representing the appellant has made the

following three submissions:-

- (1) While relying upon the judgment passed in **Sriram Housing Finance and Investment India Ltd. vs. Omesh Mishra Memorial Charitable Trust, 2022(3) RCR (Civil), 551, equivalent 2022 INSC 659**, the learned counsel submits that the objection petition filed by Manak Chand is/was not maintainable unless he was dispossessed.
- (2) No objection petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the 1996 Act') was filed. Hence, the award passed by the Arbitrator's Tribunal became final. The scope of adjudication in the execution petition arising from Arbitrator's award is extremely limited and therefore the impugned order passed by the Executing Court is not sustainable;
- (3) Manak Chand could have filed a separate suit but his objections before surrendering the possession were not maintainable.

14. Per contra, the learned counsel representing Manak Chand has submitted that objections are maintainable in view of the judgment passed by the Supreme Court in **Shreenath vs. Rajesh, (1998) 4 SCC 543**, and **N.S.S.Narayana Sarma vs. M/s Goldstone Exports Pvt. Ltd., (2002) 1 SCC 662**. It is also contended that Kanwarjeet Singh and Vikram Singh have played fraud which could be unearthed by the Court even in collateral proceedings including execution proceedings.

IV. ANALYSIS AND DISCUSSION:-

15. In the considered opinion of the Court, the following questions require adjudication:-

- (1) Whether third party objections by a non party to the decree are maintainable in absence of delivery of possession?
- (2) Whether third party objector (person who is not party to the decree) is required to file a separate suit or can he file the objection petition while requesting the Executing Court to adjudicate his rights?
- (3) If fraud is proved to have been played in obtaining the alleged Arbitration award, what can be said to fall within the scope of Executing Court?

16. Questions No.(1) and (2) can conveniently be decided together. In fact, this issue has been drawing attention of the court for quite some time. Originally, this issue was examined by the Supreme Court in **Brahmdeo Chaudhary vs. Rishikesh Prasad Jaiswal and another, (1997) 3 SCC 694.** It was held that after 1976 amendment in the CPC, all questions shall have to be decided by the Executing Court. Para 9 of the judgment is extracted as under:-

“In short the aforesaid statutory provisions of Order XXI lay down a complete code for resolving all disputes pertaining to execution of decree for possession obtained by a decree-holder and whose attempts at executing the said decree meet with rough weather. Once resistance is offered by a purported stranger to the decree and which

comes to be noted by the Executing Court as well as by the decree-holder the remedy available to the decree-holder against such an obstructionist is only under Order XXI Rule 97 sub-rule (1) and he cannot bypass such obstruction and insist on re-issuance of warrant for possession under Order XXI Rule 35 with the help of police force, as that course would amount to bypassing and circumventing the procedure laid down under Order XXI Rule 97.....”

17. Thereafter, in **Shreenath's case (supra)**, it was held that a stranger, who is in possession of the property in his own right can file objections in the execution proceedings under Order 21 Rule 97 CPC. He is not required to wait for his physical dispossession before filing his objections in the execution proceedings. It was held as under:-

“Rule 100 of the old law, as referred in the aforesaid Full Bench decision of the Madhya Pradesh High Court is a situation different from what is covered by Rule 97. Under rule 100 (old law) and Order 99 the new law covers cases where persons other than judgment-debtor is dispossessed of immovable property by the decree-holder, of course, such cases are also covered to be decided by the Executing Court. but this will not defeat the right of such person to get his objection decided under Rule 97 which is a stage prior to his dispossession or a case where he is in possession. In other words, when such person is in possession the adjudication to be under rule 97 and in case dispossessed adjudication to be under rule 100 (old law) and Rule 99 under the new law. Thus a person holding possession of an immovable property on his own right can object in the execution proceeding under Order 21, rule 97. One has not to wait for his dispossession to enable him to participate in the execution proceedings. This shows that such person can

object and get adjudication when he is sought to be dispossessed by the decree-holder. For all the aforesaid reasons, we do not find the Full Bench in Smt. Usha jain (supra) correctly decided the law.”

18. These judgments have been followed by the Supreme Court in **Silverline Forum Private Limited vs. Rajiv Trust and another, (1998) 3 SCC 723** and also in a recent judgment of the Supreme Court in **Asgar vs. Mohan Verma (2020), 16 SCC 230**. In **Jini Dhanrajgir & Anr. Shibu Mathew & Anr. Etc. (2023) 20 SCC 76**, the Supreme Court held that not only the third party objections are maintainable in the Executing Court but they are required to be decided by the Court. It will not be appropriate to direct the third party objector to file a separate suit. A similar view has been taken by the apex court in **N.S.S. Narayana Sarma's case (supra)**.

19. This court has carefully read the judgment passed by the Hon'ble Supreme Court in **Sriram Housing Finance and Investment India Ltd.'s case (supra)**. It is evident that the attention of the Bench was not drawn to the series of judgments that began from **Brahmdeo Chaudhary, Asgar etc.**. Though, the judgment passed in **Sriram Housing Finance and Investment India Ltd.'s case (supra)** would have been a binding precedent but in view of doctrine of per-incuriam the same cannot be treated as a binding precedent. In **Shreenath's case (supra)**, the Supreme Court examined the intention of the Parliament to amend the relevant provisions of Order 21 by the relevant amendment in the Code of Civil Procedure in 1976. However, unfortunately, the attention of the Bench was not drawn to the aforesaid aspect at the time of decision in **Sriram Housing Finance and Investment India Ltd.'s case (supra)**.

20. With respect to last question, it is well settled that fraud and

justice cannot dwell together. The judgment/order/award obtained by fraud is nullity in the eyes of law and can be questioned even in collateral proceedings. Reliance in this regard can be placed on the judgment passed in *S.P. Chengalvaraya Naidu (Dead) By L.Rs. vs Jagannath (Dead) By L.Rs. And Others, (1994) 1 SCC 1* and *Yashoda (alias Sodhan) vs. Sukhwinder Singh and others (2022) 17 SCC 307*.

21. The learned counsel representing the appellant in view of the overwhelming evidence proving fraud chose not to challenge its correctness recorded by the Additional District Judge. It may be noted here that Kanwarjeet Singh is alleged to have paid Rs.88,00,000/- to Vikram Singh, as per the agreement to sell, whereas another sum of Rs.22,00,000/- was paid to Harpinder Singh on behalf of Vikram Singh. Moreover, Kanwarjeet Singh has failed to prove that the Judgment Debtor-Vikram Singh was in need of money to discharge the bank loan. Moreover, the arbitration proceeding are sham because one of the alleged arbitrators has appeared in evidence. He is a constable dismissed from service and is unaware of the arbitration process or about the provisions of the '1996 Act'. Other arbitrators were also simple villagers. Moreover, Kanwarjeet Singh has attested two sale deeds executed in favour of Hema Rani sister of Vikram Singh on 22.12.2008 and 24.10.2008 which shows that relations of Kanwarjeet Singh and Vikram Singh were cordial despite so called dispute over agreement. There is no explanation why Kanwarjeet Singh will sign the agreement to sell dated 20.01.2007 executed by Vikram Singh in favour of Subhash with respect to 8 kanals land out of the land in dispute. Had there been any agreement on 14.06.2006 in favour of Kanwarjeet Singh, he would not have attested the agreement dated 20.01.2007. Vikram Singh while appearing as RW1, has

stated that Kanwarjeet Singh took Rs.15,00,000/- and got signatures on blank papers with the assurance of getting the land back from Manak Chand.

22. As per Section 36 of 'the 1996 Act' the award passed by the Arbitration Tribunal is liable to be enforced in accordance with the provisions of the Code of Civil Procedure, 1908, in the same manner as if it were in decree of the Court. In other words, for the purpose of execution, the Arbitral award is deemed to be the decree of the court. If such decree is found to have been obtained by concealing the material facts and in order to defraud someone then the Executing Court possesses the power to declare it to be nullity in the eyes of law. There is no special protection granted to the arbitral award which is deemed to be a decree in the context of the execution proceedings. Absence of objections under Section 34 of the '1996 Act' only results in finality of the arbitral award. However, it does not deprive the Executing Court from examining whether such award was a result of fraud or not.

V. **DECISION:-**

23. Keeping in view the aforesaid discussion, this court does not find it appropriate to interfere in the order passed by the Executing Court.

24. Hence, the appeal is dismissed.

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

08th July, 2025
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	:YES/NO
Whether reportable	:YES/NO