
Tilak Raj Vs Dalbir Singh And Another

Civil Revision No. 2371 Of 2019 (O&M)

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Dec. 18, 2019

Acts Referred:

Code Of Civil Procedure, 1908 " Section 11, 21

Hon'ble Judges: Jaishree Thakur, J

Bench: Single Bench

Advocate: Amrik Singh

Final Decision: Allowed

Judgement

Jaishree Thakur, J

1. That the present civil revision petition has been filed for setting aside the order dated 28.02.2019 passed by the Additional Civil Judge (Sr. Divn.)

Amritsar-cum-Executing Court.

2. Briefly the facts of the case are that the Rent Controller vide order dated 25.09.2015 allowed the ejectment petition so filed by the

petitioner/landlord on the ground of bonafide personal necessity. Thereafter the appeal preferred by the respondent/tenant against the said ejectment

order was dismissed by the Appellate Authority, Amritsar vide order dated 09.05.2016. Aggrieved against the aforesaid orders so passed, the

respondent/tenant filed Civil Revision No. 4223 of 2016 before this Court in which notice of motion was issued and the same was dismissed as well.

3. Since no stay was granted by this Court, petitioner/landlord filed execution petition before the Executing Court where the Judgment Debtor filed his

objections. It was submitted that the present execution has been filed on the basis of ejectment order dated 25.09.2015 passed by the Rent Controller,

Amritsar, regarding the property of the petitioner/DH-Tilak Raj situated at village Geheri Mandi, Tehsil and District Amritsar, and averred that the

ejectment petition as well as the execution filed by the decree holder was not maintainable as the suit property was situated in the village and was not

within the jurisdiction of Municipal Corporation, Amritsar. It was pleaded that the Rent Controller had no jurisdiction to pass an ejectment order and

prayed for dismissal of the execution filed by the landlord. The petitioner/decreed holder filed reply to the objections and took preliminary objection that

the objection petition is not maintainable and further submitted that eviction had been upheld.

4. After hearing the parties, the Executing Court vide impugned order dated 28.02.2019 held that since the suit property is not situated within the limits

of Municipal Corporation, Amritsar, and therefore the ejectment order passed by the Rent Controller is without jurisdiction. He further held that the

execution based on that ejectment order is nullity and nonest and cannot be given effect to. Therefore, the execution filed by the petitioner/landlord

was dismissed.

5. Being aggrieved, the present revision petition has been filed to challenge the aforesaid order dated 28.02.2019 passed by the Additional Civil Judge

(Sr. Divn.) Amritsar-cum-Executing Court.

6. Mr. Avnish Mittal, learned counsel for the petitioner contends that the respondent-tenant did not raise any objection to jurisdiction at the outset and

would be estopped from doing so before the executing Court. Any question of jurisdiction is to be decided only by the Civil Court/Rent Controller. It is

submitted that the executing Court cannot go behind a decree and has no option other than to execute it. It is further submitted that in case the

respondent herein, at the very outset, had taken the plea of jurisdiction, it would have been brought to his notice that vide notification dated 28th of

February 1975, the Local Government Department had notified the revenue estate of Gheri Mandi, Tehsil and District Amritsar as "Urban" for

the purposes of East Punjab Urban Rent Restriction Act 1949.

7. Per contra, Mr. Amrik Singh submits that the order of ejectment per se is not sustainable in view of the fact that provisions of East Punjab Urban

Rent Restriction Act 1949 are not applicable since the property in question did not fall in the urban area of Amritsar. It is argued that the executing

court rightly came to the conclusion that the disputed property was situated in village Gheri Mandi, Tehsil and District Amritsar and not within the

limits of Municipal Corporation and hence the ejectment of the respondent-tenant was coram non iudice. Counsel for the respondent relied upon a

judgment rendered by the Apex Court in Sushil Kumar Mehta v. Gobind Ram Bohra, 1990 (1) RCR (Rent) 423, in support of his argument, and

further relied upon Puran Lal Aggarwal v. Financial Commissioner, Haryana, 1992 (2) PLR 669, Sat Pal v. Joginder Singh, 2012 (2) PLR 222

to submit that the question of jurisdiction can be taken at any stage and in case the demised shop did not fall within the urban area, the provisions of

the Rent Act could not be invoked.

8. I have heard the counsel for the parties and with their assistance have gone through the pleadings and the case law as cited.

9. The facts are not in dispute, therefore the limited question before the court is whether the executing court could have gone behind the ejectment

order as passed by the Rent Controller and upheld uptill the High Court on the ground that the ejectment order was without jurisdiction and the

demised property did not fall within the urban limits of Amritsar, and the ejectment order is itself a nullity.

10. Section 21 of the Code of Civil Procedure provides for the stage as to when objection can be taken regarding jurisdiction of a court to decide a

matter. Section 21 postulates:

“(1) No objection as to the place of suing shall be allowed by any appellate or Revisional Court unless such objection was taken in the

Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless

there has been a consequent failure of justice.

(2) No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate

or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and in all cases where

issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

(3) No objection as to the competence of the executing Court with reference to the local limits of its jurisdiction shall be allowed by any

Appellate or Revisional Court unless such objection was taken in the executing Court at the earliest possible opportunity, and unless there

has been a consequent failure of justice.”

11. A reading of the section makes the legislative mandate clear that all objection re: jurisdiction have to be taken at the very first instance, definitely

before issues are framed and such an objection cannot be entertained in Appeal or Revision for the first time. This issue has been dealt with by the

Supreme Court in *Sneh Lata Goel v. Pushplata* Civil Appeal No. 116 of 2019 decided on 7th January, 2019. The Supreme Court was seized of an

issue where the objections regarding jurisdiction were taken up for the first time before the executing court, who dismissed the objection as raised.

The order was challenged before the High Court by an unsuccessful judgment debtor and the High Court set aside the order of the executing court

upholding the contention that a decree passed without jurisdiction could not be exercised. The Supreme Court after referring to various case law held

that: “Thus, where the defect in jurisdiction is of kind which falls within Section 21 of the CPC or Section 11 of the Suits Valuation Act 1887, an

objection to jurisdiction cannot be raised except in the manner and subject to the conditions mentioned thereunder. Far from helping the case of the

respondent, the judgment in *Kiran Singh* (supra) that an objection to territorial jurisdiction and pecuniary jurisdiction is different from an objection to

jurisdiction over the subject matter. An objection to the want of territorial jurisdiction does not travel to the root of or to the inherent lack of jurisdiction

of a civil court to entertain the suit. The Supreme Court further set aside the order of the High Court upholding the decision of the executing court

dismissing objections.

12. Similarly in a case referred to as Rafique Bibi v. Sayed Waliuddin, 2003 (2) R.C.R. (Rent) 297, the question of jurisdiction came up for

consideration in a rent matter arising out of the Rajasthan Premises (Control of Rent and Eviction) Act 1950, where an order of ejectment was sought

to be challenged in execution proceedings. The objections were dismissed and the order was upheld by the High Court. Before the Supreme Court it

was argued that the decree is a nullity and cannot be executed. Dismissing the appeal it was held:

“5. What is void to be clearly understood. A decree can be said to be without jurisdiction, and hence a nullity, if the Court

passing the decree has usurped a jurisdiction which it did not have; a mere wrong exercise of jurisdiction does not result in nullity. The

lack of jurisdiction in the Court passing the decree must be patent on its face in order to enable the executing Court to take cognizance of

such nullity based on want of jurisdiction; else the normal rule that an executing Court cannot go behind the decree must prevail.

6. Two things must be clearly borne in mind. Firstly, the Court will invalidate an order only if the right remedy is sought by the right person

in the right proceedings and circumstances. The order may be a nullity and void but these terms have no absolute sense;

their meaning is relative, depending upon the Court's willingness to grant relief in any particular situation. If this principle of illegal relativity is borne in mind, the law can be made to operate justly and reasonably in cases where the doctrine of ultra-vires, rigidly applied,

would produce unacceptable results. (Administrative Law, 8th Edition, 2000, Wade and Forsyth, p.308). Secondly, there is a distinction

between mere administrative orders and the decrees of Courts, especially a superior Court. The order of a superior Court such as the High

Court, must always be obeyed no matter what flaws it may be thought to contain. Thus a party who disobeys a High Court injunction is

punishable for contempt of Court even though it was granted in proceedings deemed to have been irrevocably abandoned owing to the

expiry of a time limit. (ibid, p. 312)

7. A distinction exists between a decree passed by a Court having no jurisdiction and consequently being a nullity and not executable and a

decree of the Court which is merely illegal or not passed in accordance with the procedure laid down by law. A decree suffering from

illegality or irregularity of procedure, cannot be termed inexecutable by the executing Court; the remedy of a person aggrieved by such a

decree is to have it set aside in a duly constituted legal proceedings or by a superior Court failing which he must obey the command of the

decree. A decree passed by a Court of competent jurisdiction cannot be denuded of its efficacy by any collateral attack or in incidental

proceedings.Ã¢â‚¬â€œ

13. In Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman, (1970) 1 SCC 670: 1970 RCR (Rent) 427 (SC):

Ã¢â‚¬â€œWhen the decree is made by a Court which has no inherent jurisdiction to make it, objection as to its validity may be raised in an

execution proceeding if the objection appears on the face of the record. But where the objection as to jurisdiction of the Court to pass the

decree does not appear on the face of the record and requires examination of the questions raised and decided at the trial or which could

have been but have not been raised, the executing Court will have no jurisdiction to entertain an objection as to the validity of the decree

on the ground of absence of jurisdiction.Ã¢â‚¬â€œ

14. The ratio of the judgments as relied upon are wholly applicable to the facts of the present case and the case law as cited by the respondent is

distinguishable. In the instant case the respondent did not take up any plea in the written statement regarding jurisdiction of the Rent Controller to

decide the issue. Pleas were taken about maintainability while denying tenancy under the landlord; denied the building being unsafe for habitation,

while specifically denying that the Rent Controller could go into the question of title and ownership. The objection regarding jurisdiction was not taken

up. As per Section 21 CPC objections to jurisdiction are to be taken up at the outset which were not done, therefore, as per the ratio as settled in the

case of Sneh Lata (supra) the objections could not be taken at a later stage. Therefore the executing erred in allowing the objection and the said

impugned order is set aside. Even otherwise there is a notification which is available on the record dated 28.02.1975 declaring the revenue estate of

Gheri Mandi as urban estate for the purposes of the East Punjab Urban Rent Restriction Act 1949 and, therefore, the objections as raised are not

sustainable had they been raised at the very outset.

15. Consequently, the revision petition stands allowed and the executing Court is directed to act immediately.