
(1987) 03 P&H CK 0013

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 1427 of 1979

Prem Kumar Suri

APPELLANT

Vs

Shri Sain Dass Comar and others

RESPONDENT

Date of Decision: March 6, 1987

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 97

Citation: (1987) 1 RCR(Rent) 605

Hon'ble Judges: J.V. Gupta, J

Bench: Single Bench

Advocate: V.K. Bhandari, for the Appellant; G.S. Bhatia, for the Respondent Nos. 7 and 8 and Mr. R.K. Chibbar, for the Respondent Nos. 1 and 2, for the Respondent

Final Decision: Dismissed

Judgement

J.V. Gupta, J.

Sain Dass and Madan Lal landlords, filed the ejectment application against their tenants M/s. Vishvkarma Corporation through Rattan Lal, Jagdish Lal and others were also impleaded as parties to the ejectment application being alleged sub-tenants. Ultimately, eviction order was passed against the said judgment-debtors. When the decree-holders sought execution, Prem Kumar Suri resisted the possession on the ground that he had been in possession of a portion of the demised premises since July, 1972, and had been carrying on his business there under the name and style of Prem Auto Centre, and paying rent to judgment-debtor No 1, i. e., M/s. Vishavkarma Corporation for the portion in his occupation the same having been let out to him before the enforcement of the East Punjab Urban Rent Restriction Act in the Union Territory Chandigarh on 4th November, 1972, and, thus, the tenancy was legally and validly created by the judgment-debtor.

2. An application purporting to be under Order 21 R.97, dated 22nd May, 1979, was, therefore, filed by Prem Kumar Suri in the executing court. Reply to the said objections was filed on behalf of the decree holders in which the said allegations were denied. A preliminary objection was also raised that the application is not maintainable as the compromise decree was passed on 6th April, 1979, on the ground of subletting and the judgment debtors were ordered to hand over the vacant possession to the decree holders on or before 15th April, 1979. The executing court took the view that the provisions of Order 21 R. 97. of the CPC did not apply to the facts and circumstances of the present case. According to the court, it was not understandable how Prem Kumar Suri had moved this application under the said provisions, because the said Rule relates to the resistance or obstruction of possession and the person complaining should be the decree-holder. Thus, according to the executing court, Prem Kumar Suri had no locus standi to move such an application during the execution of the decree by Sain Dass; that this right is available to the decree-holder, and not any stranger, and that if advised, he can seek his remedy according to law elsewhere in some other manner. With these observations, the application of Prem Kumar was dismissed. Dissatisfied with the same, Prem Kumar objector has filed this petition in this Court.

3. At the time of motion hearing, the ejectment of Prem Kumar was stayed, which ex parte order was later affirmed.

4. The learned Counsel for the Petitioner submitted that the objection petition was maintainable because the Petitioner claimed his right through judgment debtor No. 1 as he was inducted as a tenant by him prior to the enforcement of the East Punjab Urban Rent Restriction Act in the Union Territory of Chandigarh on 4th November, 1972. Thus, argued the learned Counsel, the objections u. o. 21 Rule 97, CPC. were maintainable. In any case, contended the counsel, the objections were maintainable u/s 47 of the C. P. C. because the Petitioner claims his right through the judgment debtor. Since he was not made a party to the ejectment application by the decree-holder, he could not be ejected unless his rights were determined by the executing court.

5. On the other hand, the learned Counsel for the decree-holder submitted that no objections u. o. 21 R. 97, CPC, were maintainable by a third party. It is only the decree-holder who can make an application thereunder, complaining of any resistance or obstruction by any person, it is asserted. In any case, it is contended, the objections could be filed u. Order 21 R. 99, CPC, by a third person only when he was dispossessed. According to the learned Counsel for the Decree-holder, the Petitioner must surrender possession before filing the objections u. Order 21 R. 99, CPC. In support of this contention, he referred to *Om Parkash v. M/s Durga Duss Harbans Lal etc.* 1981 (2) R. C. R. 191., *Harijan Wood Workers Production-cum-Sales Cooperative Society Ltd v. Shmt. Maya Wati* 1984 (1) R. L. R. 519., *Sushil Kumar v. Ved Parkash* 1984 H. R. R. 70., *K. A. Prabhakaran v. Kuttian Parkashan* 1985 (2) R. C. R.

6. Admittedly, no such objection was taken by the decree-holder in the Reply filed on his behalf to objections filed u Order 21 R. 97, CPC, by Prem Kumar, Petitioner. Even the executing his not dismissed the objection petition on the ground that the Petitioner should first surrender possession before filing the objections. Rather, the view taken by the executing court is that u O 21 R 97. CPC. the application could be filed by the decree-holder only and not by anybody else. According to the Petitioner Prem Kumar, he has been in occupation of the premises in dispute as a sub-tenant under the judgment-debtor himself but he is not liable to ejectment in execution of the decree because he was inducted as a subtenant prior to the enforcement of East Punjab Urban Rent Restriction Act in the Union Territory of Chandigarh on 4th November, 1972 That being the position, Prem Kumar was not a stranger as such but was deriving his title through the judgment debtor. The only question to be decided was whether he is entitled to keep his possession because he was inducted as a sub-tenant prior to the enforcement of the Act. Thus, his objection petition was maintainable u/s 47 of the C. P. C. even if the same may not be maintainable u. Order 21 R. 97, C. P. C., as such. Under the circumstances, this petition succeeds, the impugned order is set aside and the case is sent back to the executing court to decide the objections of the Petitioner as to whether he is entitled to remain in occupation of the premises having been inducted as a sub-tenant by the judgment debtor M/s Vishavkarma. Corporation prior to the enforcement of the Act, i. e., the 4th November, 1972, as alleged in his objection petition.

7. The parties, through counsel, are directed to appear in the executing court on March 30, 1987.