

**IN THE COURT OF ADDITIONAL CIVIL JUDGE,
SENIOR DIVISION, NAKODAR PRESIDED OVER BY
RAJESH AHLUWALIA, PCS (UID NO.PB0281)**

CIS CASE NO.	Obj 1/2018
CNR NO.	PBJLA0-000685-2018
DATE OF INSTT.	28.08.2017
DATE OF ORDER	27.09.2018

Satish Ratti aged about 72 years wife of Ram Tirath Ratti son of Lekh Raj Ratti, resident of House No.802, Mohalla Rattian, Nakodar, District Jalandhar.

.....Decree Holder/Respondent

Vs

Rakesh Kumar son of Piare Lal, Shopkeeper, Post Office Road, Nakodar, District Jalandhar.

.....Judgment Debtor/Objector

(EXECUTION APPLICATION)

Objection petition on behalf of Judgment debtor i.e. Rakesh Kumar son of Piare Lal, Shop Keeper, Post office Road, Nakodar against the present execution of order dated 29.10.2016 as said order is a nullity in the eyes of law as same has been obtained by the respondent Satish Ratti by misleading the court and in a fraudulent manner by wrongly projecting herself to be a N.R.I. within the meaning of East Punjab Urban Rent Restriction Act, 1949 and averring herself to be a green card holder/Permanent resident of Germany & by projecting herself to be owner of the shops when otherwise she was only residing in the Germany on a temporary Residence Permit for a fixed period and is not owners of the shops as detailed hereunder, being result of fraud, same has become nonest and void ab initio from the very inception and no consequences would be arisen from this void order.

Present:- Shri Vivek Pattu, Advocate counsel for the Respondent/D.H.
Shri Rohit Narang, Advocate, counsel for objector/J.D.

ORDER

Satish Ratti Decree Holder filed an execution petition for taking possession of the demised property from the J.D. on the basis of rent petition titled Satish Ratti Vs Rakesh Kumar decided on 29.10.2016 after the revisions/appeal dismissed by Hon'ble High Court.

2. Upon notice, J.D. appeared and contested the execution petition while moving objection petition with the averments that the alleged order of eviction dated 29.10.2016 under execution in the present execution is non-executable in the eyes of law because same has been obtained by the decree holder by playing fraud upon the court. It was further pleaded that decree holder Satish Ratti filed petition under Section 13-B of Rent Act against JD/objector claiming herself to be owner of the property holding green card in the Germany being N.R.I. She had filed the petition against the J.D/objector and other two tenants. She misled the court by projecting herself as N.R.I. placing on record certain documents but now when those documents were got translated by the objector, it has come to the notice that she has misled and committed fraud with the court as she is not N.R.I. within the meanings. Leave to contest filed by JD/objector was allowed in the main rent petition and objector took

specific stand that decree holder Satish Ratti is not owner of the property. Eviction order was passed by the Rent Controller without considering those facts. Decree Holder during her evidence in the main petition has exhibited her residence permit as Ex.P3 stating to be Green Card in Germany in the German language but the same is only residence permit but not Green Card. After getting the translation from Wikipedia, objector came to know that German Residence Permit is issued to Non E.U. Citizen living in Germany and the same is issued for a specific period. Decree Holder has played fraud upon the court claiming herself to be N.R.I. and obtained order of eviction against the JD/objector which is null and void and cannot be executed. Finally it has been prayed that execution be dismissed.

3. Objections were contested by D.H./respondent by filing reply taking preliminary objections that the same are not maintainable in the eyes of law. Executing Court cannot go behind the decree. Issue of Decree Holder being owner of the property in dispute and N.R.I. status has already been decided by Rent Controller and the same cannot be re-agitated in the execution. Objector/JD was granted leave to contest and he hotly contested the eviction petition and lost. Revision petition filed by him before Hon'ble Punjab & Haryana High Court on the same grounds as taken in the objections stands already dismissed whereby the finding that

D.H. is owner of the property and is N.R.I. stands confirmed. J.D. in his cross-examination in the main petition admitted the fact that petitioner Satish Ratti is N.R.I. and he cannot challenge her status in the execution. The objections were filed just to harass the decree holder and to delay the warrant of possession. J.D. has not approached the court with clean hands as objections are silent with regard to the dismissal of revision petition and review petition filed by objector before Hon'ble High Court. On merits while denying averments of the objections made prayer for dismissal of the objections.

4. I have considered rival contentions and have gone through their arguments which are verbatim as pleas and counter pleas taken by respective parties in their respective pleadings. Counsel for objector argued that Decree Holder has misled the court while placing residence permit as Green Card issued by German Government claiming herself to be N.R.I. whereas she was not N.R.I. The order of eviction was obtained by playing fraud upon the court and objector was not afforded proper opportunity to prove the fraud played upon by Decree Holder upon the court as he later on came to know that German Government not issues Green Card and the Residence Permit is only for a specific period. Every court has a power to recall its own order obtained by playing fraud upon the court. In support of this contention, he has referred to **2011(3) Civil**

Court Cases 6 (SC) case titled Meghmala & Ors Vs G.NarasimhaReddy & Ors and 2006(4) Civil Court Cases 407 (SC) case titled Hamza Haji Vs State of Kerala and finally it was prayed that objections be allowed and execution be dismissed.

5. Ld. Counsel for the Decree Holder on the other hand argued that the present objections are filed by J.D. just to harass Decree Holder and to delay the execution of warrant of possession. No fraud was played upon Court by the Decree Holder. During the proceedings of the Rent petition, Leave to contest filed by J.D. was allowed and he was given ample opportunity to contest the eviction petition while proving her case. Issues with regard to the ownership of the property in dispute and the status of N.R.I of decree holder stands already decided on the basis of oral as well as documentary evidence led by parties in the eviction petition wherein decree holder was thoroughly cross-examined. Revision petition against the eviction order stands already dismissed by the Hon'ble High Court, copy of which is part of the file which clearly establishes that the same was filed on the same ground which are taken on the objections now. Review petition against dismissal of revision petition was also filed by J.D./objector before Hon'ble High Court which is also dismissed, copy of which is also part of the file and finally it was prayed that objections be dismissed and execution petition be allowed.

6. Bare perusal of the eviction order dated 29.10.2016 passed in Rent petition titled Satish Ratti Vs Rakesh Kumar decided on 29.10.2016 clearly reveals that leave to defend the eviction petition was allowed by Rent Controller and Rakesh Kumar was allowed to contest the petition wherein tenant had filed detailed written statement in the lines of all the objections which are taken now. Out of the pleadings following issues were framed by the Rent Controller;

(1) whether there exists relationship of landlord and tenant between the petitioner and respondent?(OPP)

(2) Whether petitioner is N.R.I and is entitled to seek eviction of the respondent from the demised premises as per Section 13-B of East Punjab Urban Rent Restriction Act?(OPP)

(3) Whether petitioner has no locus standi to file this petition?(OPR)

(4) Whether petitioner has concealed the material facts from this court?(OPR)

(5) Relief.

7. Bare perusal of the eviction order further clearly reveals that the petition was hotly contested wherein applicant examined her witnesses and respondent examined his witnesses. There is specific finding of the

Rent Controller that Satish Ratti is landlord of the demised premises and N.R.I. by status and the eviction petition stands allowed. There is nothing in the eviction order that the same is passed without appreciating the evidence.

8 Objector in his objections is silent with regard to the dismissal of the revision petition filed by him and the review petition by the Hon'ble High Court. There is nothing on record on the part of the objector to substantiate his claim that now when the execution is filed for possession of the demised premises, he came to know that decree holder Satish Ratti played fraud with the court with regard to her status of being N.R.I. Perusal of the pleadings of the review petition and orders of review petition filed by J.D./objector before Hon'ble High Court clearly reveals that the revision filed by JD challenging the order under execution stands dismissed by Hon'ble High Court and review petition challenging the dismissal order of revision petition was also dismissed and grounds taken in both petitions are almost same as taken in the present objections petition.

9. It is settled law that an issue which stand adjudicated by a Court and appeal/revision filed against the same stands dismissed and finding gain finality the same cannot be reagitated in the execution by way of objections on the ground that the findings were got obtained by

playing fraud upon the court. Proposition of law relied upon by Id. Counsel for objector is not disputed but the facts of the present case are quite different from the facts of those cases. There is nothing on record on the part of the objector as to what prevented him to take the plea of fraud or to put questions with regard to the Residence Permit/ Green Card Ex.P3 placed on record by D.H. in the Rent petition while cross-examining the witness. There is nothing on record on the part of the applicant as to what prevented him from pleading and proving his alleged contention of fraud before Hon'ble High Court in the Revision petition and Review petition which he is raising now while filing the objections petition at the fag end of the trial when warrant of possession are being issued. Perusal of the judgment of the Rent petition titled Satish Ratti Vs Rakesh Kumar which is part of the file clearly reveals that objector was given ample opportunity to plead and prove his case and he had led evidence accordingly in detail which is discussed in the eviction order. The arguments advanced by Id. Counsel for objector that from the Wikipedia he came to know that there is difference between Green Card and Residence Permit, has no value in the eyes of law as ignorance of law is no excuse in the eyes of law. There is nothing on record that Decree Holder Satish Ratti has played any fraud upon the court for obtaining eviction order in her favour. The arguments advanced by Ld. Counsel for

the objector that in the main trial during the cross-examination Satish Ratti had denied the facts that she had ever applied for getting Municipal record updated in her favour has no value in the eyes of law at this stage as the issues with regard to the status and ownership of Satish Ratti and relationship of landlord and tenant between the parties stands already adjudicated by the court and agitated before the Hon'ble High Court also and has gain finality. The findings with regard to the fact that Satish Ratti being N.R.I. is owner of the property and there exists relationship of landlord and tenant between the parties stands already confirmed by Hon'ble High Court and same cannot be disputed by taking lame ground of fraud being played upon the court at the fag end of the execution petition. It is settled law that executing court cannot go behind the findings which gained finality and before it for executing. In the present case eviction order passed in rent petition bearing No.EA 8 of 2011 titled Satish Ratti Vs Rakesh Kumar decided on 29.10.2016 had gained finality on all issues as revision/review filed by JD/objector stands dismissed by Hon'ble High Court and there is nothing on record that JD/objector was not given proper opportunity to defend the trial as alleged.

10. In view of my findings in the foregoing paras, I am of the considered view that the present objections are filed with a sole motive

just to delay the execution of eviction order passed in 2016 and is hereby dismissed being devoid of any merits.

11. However, the above said observations of mine shall have no bearing on the merits of the case.

Note: Certified that all the ten pages of this order are signed by me, which have been dictated and typed directly on computer.

Pronounced:
Dt: 27.09.2018

Rajesh Ahluwalia, PCS,
Addl.Civil Judge (Sr. Division),
Nakodar (UID No.PB0281)

Swanjan Rehan*