

(15) This contention cannot be accepted. It is true that X-Ray provided a good diagnostic facility. Medical X-Ray are necessary for the diagnosis and treatment of diseases. However, experience has shown that X-Rays, "give significant dose of radiation". This presents a health hazard. Even moderate "doses of radiation can interfere seriously" with the human system. When an X-Ray clinic is set up in residential premises, the radiation emitted in the diagnostic process not only exposes the patient or the physician but also others living inside the premises to a continuous process of radiation. Just as a small leak can sink a big ship, the continued exposure to X-Rays how-so-ever small can do serious physical damage in the long run to all the persons living in the house. In such a situation, it cannot be said that an 'X-Ray clinic' is the same thing as a lawyer's 'study' or that merely because a lawyer is permitted to run his 'chamber' in the residential premises, a doctor has a right to run an X-Ray clinic. There is no parity between the two. Consequently, the question of violation of Article 14 of the Constitution does not arise.

(16) No other point was urged.

(17) In view of the above, we find no merit in this writ petition. It is, consequently, dismissed in limine.

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J.S.T.

Before Hon'ble R.L. Anand, J

SOM PARKASH--Petitioner  
versus

SANTOSH RANI & ANOTHER--Respondents

C.R. No. 2503 of 1996

24th July, 1996

Code of Civil Procedure, 1908--S. 151--Order  
21 Rls. 35,97--Objections to execution of decre●

*filed--Adjudication of such objections--Meaning of adjudication.*

Held that adjudication does not mean that framing of issues is always necessary for the executing Court. If the pleas raised by the objector in his objection petition have been considered *prima facie* by the executing Court and the first appellate Court, in my opinion, it is a proper application of mind on behalf of both the Courts, for which there should not be any grouse to the objector. It is not the case that the objections of the objector were thrown straightaway, rather the impugned order dated 9th April, 1996 passed in the case indicates that all the possible stands of the objector were duly considered and thereafter the Court came to the conclusion that the objections had no force. The executing Court came to the conclusion that the objector had already exhausted his remedies regarding protection of his possession by means of filing a civil suit and his claim was not admitted even upto the High Court, therefore, it could not be held that the objector was not heard or that he was then entitled independently to protect his illegal possession. By opening a new chapter, as pronounced by the objector, would mean to nullify all those valid orders, which were decreed by the Court. To sum up the term 'adjudication' as used in the Rules does not start and end with the framing of the issues but it requires appreciation of the case of the objector and the documents in support of such objections.

Ashutosh Mohunta, Advocate for the  
Petitioner.

C.M. Munjhal, Advocate for the Respondent.

#### JUDGEMENT

(1) Som Parkash son of Lal Chand,  
resident of Sirsa, Tehsil and District Sirsa, has

filed the present Civil Revision and it has been directed against the order dated 8th June, 1996 passed by the Court of Additional District Judge, Sirsa, who affirmed the order dated 9th April, 1996 passed by the Civil, Judge (Senior Division), Sirsa, who dismissed the objections of Som Parkash to the ejection order dated 22nd July, 1994 and allowed the application of the decree-holder and directions were given to the objector Som Parkash to hand over the vacant possession of the shop in dispute to the decree-holder Smt. Santosh Rani within a period of 10 days at his own costs and responsibility failing which the law would take its own course.

(2) Before I deal with the submissions raised by the learned counsel for the parties, a few facts are necessary in order to appreciate the controversy between the parties. Decree-holder Smt. Santosh Rani filed an ejection petition against her tenant Sunil Kumar and her petition was ultimately decided on 22nd July, 1994 after a lapse of about four years and an eviction order was passed against Sunil Kumar, who preferred a rent appeal against the ejection order, which was also dismissed on 17th July, 1995. After the passing of the eviction order dated 22nd July, 1994 Sunil Kumar the original tenant parted the possession of the shop to Som Parkash objector. The statement of Sunil Kumar, judgement debtor, the original tenant, was recorded in the appeal on 17th July, 1995 and Sunil Kumar stated before the Appellate Authority that Som Parkash son of Lal Chand resident of Sirsa had taken possession of the shop in question from him illegally and forcibly after filing of the rent appeal and now he was in possession of the disputed shop and for that reason he did not want to prosecute his appeal against the judgement dated 22nd July, 1994 and therefore, his appeal be dismissed as withdrawn. On this statement of Sunil Kumar judgement debtor the appeal was dismissed by the Appellate Authority on 17th July, 1995. It is the case of the decree holder that in this manner Som

Parkash came into possession of the shop in dispute in an illegal and forcible manner after the passing of the ejectment order and after the filing of rent appeal, which was filed on 12th, 16th August, 1994. Som Parkash filed objections that he was occupying the shop in his individual right; he being the tenant of the original owner of the shop and, therefore, his possession should be protected. The case of Som Parkash is that the shop in question was owned by Charath Singh son of Kishan Singh, who had let out the same to him on monthly rental of Rs. 400 vide rent note dated 1st November, 1980 and, thereafter the rent was increased to Rs. 750 per month with effect from 1st February, 1984 and since then he has been in possession of the shop in dispute as a tenant and he was never ejected therefrom at any time in due course of law. In fact, the decree-holder Smt. Santosh Rani is the real sister of Sunil Kumar Judgment debtor. Both of them had colluded with each other and managed to get the eviction order dated 22nd July, 1994 by filing this frivolous ejectment petition without impleading him as a party.

(3) The stand of the decree-holder is that the possession of Som Parkash is illegal and, therefore, he is liable to be evicted in pursuance of the ejectment order dated 22nd July, 1994, which has the force under the East Punjab Urban Rent Restriction Act.

(4) Som Parkash also filed a civil suit that he be not dispossessed from the shop in question illegally and forcibly; this was a suit for declaration with consequential relief of permanent injunction, which was filed against the decree-holder Smt. Santosh Rani. He also filed an application under Order 39 Rules 1 and 2, C.P.C., praying that during the pendency of the suit he be not evicted from the demised premises. The objector Som Parkash earlier obtained stay order from the Civil Court on 1st April, 1995 in the suit filed by him. The decree

holder Smt. Santosh Rani filed an application for the vacation of the stay but the said order dated 1st April, 1995 was confirmed on 20th September, 1995. Santosh Rani filed an appeal under Order 43, C.P.C. against the order dated 20th September, 1995 on 27th September, 1995 and this appeal was disposed of on 20th November, 1995 by the Court of Additional District Judge, Sirsa, who accepted the appeal of the decree holder and the order dated 20th September, 1995 was set aside. In this manner the application of Som Parkash under Order 39, Rule 1 and 2 C.P.C. was dismissed. It was held by the learned Additional District Judge, Sirsa, that possession of Som Parkash was not as a tenant since 1st November, 1980 as claimed by him. On the other hand Som Parkash entered into the shop in question after the passing of the ejectment order dated 22nd July, 1994 and so he is liable to be ejected in execution of the ejectment order, which was passed against Sunil Kumar, as the possession of Som Parkash was through Sunil Kumar. In other words, it was held by the appellate Court that Som Parkash must go from the demised premises with the original tenant judgement debtor. Against the order dated 20th November, 1995 passed by the Additional District Judge, Sirsa, Som Parkash Objector filed Civil Revision No. 4335-M of 1995 in the High Court, which affirmed the order dated 20th November, 1995 passed by the first appellate Court by holding that there was no ground for interference with the said order. In this manner the order dated 20th November, 1995 got the finality. Vide para No. 19 of the judgment dated 2nd November, 1995 it was indicated that defendant No. 2 Sunil Kumar was not pulling on well with his sister Santosh Rani due to litigation between them and for this reason he intentionally gave the possession of the disputed shop to plaintiff Som Parkash to harm the interests of decree holder Smt. Santosh Rani. It was also held that there was no collusion between Smt. Santosh Rani and Sunil Kumar, rather Sunil Kumar and Som Parkash had

joined hands in order to cause harm to Smt. Santosh Rani. It may also be stated that the Civil Suit filed by the objector Som Parkash for declaration and injunction is still pending in the Civil Court. With regard to the matter of interim relief, Som Parkash had already lost upto the High Court. While dismissing the objections of Som Parkash, it was observed by the executing Court that it had reached to a firm conclusion that the objector was also liable to be evicted in pursuance of the ejection order dated 22nd July, 1994 and his possession was not liable to be protected even if he was not party to the eviction proceedings. Against this order dated 9th May, 1995 objector Som Parkash filed an appeal in the Court of Additional District Judge, Sirsa, who vide the impugned order dated 8th June, 1996 came to the considered opinion that consideration of objections by the executing Court did not necessarily include nor did it cast a mandate on the executing Court to frame the issues and record the evidence, if those objections were prima facie without merit. It also held that if the executing Court finds that the objections of the judgment debtor are frivolous, then framing of issues and recording of evidence would be of no use. Also it was observed that the objections of Som Parkash were more in the nature of prolonging the litigation so that the decree holder may not be able to reap the fruits of the decree. Such a course in favour of the objector would mean to give him an illegal profit. From the impugned order dated 8th June, 1996 it is also clear that the Court of Additional District Judge took into consideration that the documentary proposed evidence, which was sought to be produced by the objector Som Parkash, and after perusing the same the lower appellate Court came to the conclusion that the objector had no case to successfully resist the ejection order and ultimately finding no merit in the appeal, it was dismissed.

(5) Still aggrieved by the impugned order dated 8th June, 1996 the present revision petition

has been filed by Som Parkash, which is being disposed of with the help of Mr. Ashutosh Mohunta, Advocate, appearing on behalf of the petitioner, and Mr. C.M. Munjhal, Advocate, appearing on behalf of the respondents, and with their assistance I went through the record of this case.

(6) I have already reproduced a few facts of the case and at the cost of repetition it would be clear that after the passing of the ejectment order dated 22nd July, 1994 objector Som Parkash filed a civil suit and also filed an application under Order 39, Rules 1 and 2, C.P.C. At one stage his application was allowed by the trial Court but was dismissed by the first appellate court and then by the High Court. By losing his battle on one front, the objector Som Parkash again filed the objections in the executing Court in order to successfully resist the ejectment order dated 22nd July, 1994 on the plea that he is a tenant in the demised premises since 1980 and that the ejectment order has been obtained by Smt. Santosh Rani in collusion with her brother Sunil Kumar. I have already mentioned above that the ejectment order was passed after a lapse of four years, which prima facie suggests that the ejectment order dated 22nd July, 1994 was not passed in a collusive manner but after a hot contest and it cannot be ruled out that in order to defeat and delay the fruits of the decree Sunil Kumar might have given the possession to a third person so that Smt. Santosh Rani may not be able to get possession of the property in the near future. Be that as it may, this Court has to deal with this revision from legal angles.

(7) The frontal argument raised by the learned counsel for the petitioner was that the executing Court could not throw away the objections of the petitioner summarily but was bound to adjudicate the controversy raised by the objector in his objections and the controversy raised could only be disposed of by framing issues and by giving proper opportunity to the

objector to lead evidence in support of his averments/objections that he was inducted as a tenant in the shop in question by the original owner Charath Singh under a rent note. The non-framing of the issues and non-adjudication of the controversy by the executing Court had led to a patent illegality, which should be rectified in revision. Shri Mohunta further submitted that even the first appellate court erred when it dismissed the appeal of the objector. His second argument was that with the filing of the objections under Order 21, Rule 97, C.P.C., the stay was automatic in favour of the objector till his objections are finally disposed of. The decree holder Smt. Santosh Rani could not prosecute successfully the ejection order dated 22nd July, 1994.

(8) I will deal with the case law referred to by the learned counsel for the petitioner in a subsequent portion of this order. First of all I would like to summarise the main arguments raised by the learned counsel for the respondents who submitted that the objections of the objector were the subject-matter of the suit filed by him and all the pleas now raised by the objector were raised in the suit itself. That matter has been independently considered by the competent Court of jurisdiction and ultimately it was found by the first appellate Court that the objector had been inducted into the shop by the judgment debtor Sunil Kumar and is liable to be ejected. The plea of the objector was also considered by the High Court, which also came to the conclusion that Sunil Kumar and Som Parkash were hand in gloves with each other so that the ejection order in favour of Smt. Santosh Rani may not be executed in a proper manner. Finding has gone against the objector that he was not a tenant of the 'demised premises muchless since 1980 and, therefore, no further adjudication was required by the executing Court which had taken into consideration all these factors and then dismissed the objections and allowed the application of the decree-holder. Further the first appellate Court



also considered all the aspects of the case and also examined the documents which could be produced by the objector and then it came to the conclusion that the objector had no case. In this manner there is no force in this revision which should be dismissed as the intentions of the objector are not sincere, who is bent upon to frustrate the ejectment order dated 22nd July, 1994 which had been obtained by the decree holder after a hot contest. The said order of ejectment was not collusive, rather it has been obtained after four years of the filing of the ejectment application. According to the learned counsel appearing on behalf of respondent No. 1 Smt. Santosh Rani, Sunil Kumar (respondent No.2) judgment debtor, had no case. Therefore, he intentionally inducted Som Parkash into the shop in question. The possession of the objector is more or less of a trespasser and he must go with the original judgment debtor. Also it was pleaded by the learned counsel appearing on behalf of respondent No. 1 that the decree holder is taking possession in execution of a valid ejectment order, which does not amount to illegal entry and, therefore, the revision petition should be dismissed.

(9) After considering the rival contentions of the parties, I am of the considered opinion that this revision petition is without any merit. Order 21, Rules 97 and 98, C.P.C., lay down as under :--

*"97. resistance or obstruction of possession of immovable property.--(1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.*

*(2) Where any application is made under sub-rule (1), the Court shall proceed to*

adjudicate upon the application in accordance with the provision herein contained."

"Orders after adjudication.--(1) Upon the determination of the question referred to the Rule 101, the Court shall, in accordance with such determination and subject to the provisions of sub-rule (2),--

(a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(b) pass such other order as, in the circumstances of the case, it may deem fit.

(2) Where, upon such determination, the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment debtor or by some other person at his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant order the judgment-debtor, or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days."

A perusal of the above provisions would show that law has given a mandate to the executing Court on receipt of the objections that it would proceed to adjudicate upon such objections and upon the determination of the controversy, to

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pass the appropriate orders. In *Subhendu Gupta v. Calcutta Vyapar Pratisthan Ltd.*, (1) it has been laid down that after the amendment in the language of the provisions of Order 21, Rules, 58, 97, 99 and 101, it is incumbent upon the executing Court to hear and adjudicate every question involved whether the person raising objections was or was not a party to the proceedings which resulted in the decree under execution. A person whosoever obstructs execution of a decree has a right of hearing and as such falls within the category of parties to the proceedings. The order passed on an application which has been adjudicated is a decree appealable. Once this process is adopted, a regular suit cannot be filed for remedy. Therefore, the question has to be adjudicated on consideration of evidence. The learned counsel has drawn my attention to para No. 5 of this judgment and submitted that the process of adjudication necessarily involves production of evidence, oral and documentary, and consideration thereof by the Court. Since the executing Court did not frame the issues in order to take into consideration the evidence which was to be led by the objector; rather it had disposed of the objections in a summary manner, therefore, the orders of the executing court as well as the first appellate court were not sustainable in the eyes of law. Learned counsel for the petitioner also relied upon *Noorduddin v. Dr. K. L. Anand*, (2) and submitted that the objections of the objector had to be decided after considering the objections and that the executing court decided those objections on the basis earlier order of the court in which the objector was neither a party nor he was bound by those orders, therefore, the impugned orders cannot be sustained in the eyes of law. He drew my attention to para No. 9 of the judgment and submitted that adjudication before execution is an efficacious remedy to prevent fraud, oppression, abuse of the process of the court or miscarriage of justice. The

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(1) 1995 (3) RRR 443

(2) 1995 92) RRR 556

learned counsel submitted that the object of law was to meet out justice. Right to the right, title or interest of a party in the immovable property is a substantive right, which could only be determined by way of adjudication. In case his client is not allowed to lead evidence, the faith of the people in the efficacy of law, which is the saviour and succour for the sustenance of the rule of law, would be diminished. He also submitted that the possession of his client pending adjudication needs to be protected by an interim order, which has been declined by the courts below.

(10) The submissions raised by the learned counsel for the petitioner may look assuring on its first flush, but on my deeper scrutiny I have found the same without any substance. A person, who wants stay in the shape of equity must do equity also. What is an adjudication is necessarily a question which depends upon case to case. I have already stated above that the entire objections of the objector were based on the ground that he had been inducted as a tenant in the shop in question since 1980 much prior to the purchase of the property by Smt. Santosh Rani, who purchased this property in the year 1989. His possession was continued since 1980 and that Sunil Kumar had been put up by Smt. Santosh Rani and she obtained the decree of ejectment against him. This stand of the objector has been properly adjudicated and considered and appreciated by the Civil Court, which was supposed to see *prima facie* case before granting the stay order. What further adjudication was required on the part of the executing Court, which could not set aside the legal orders passed by the Civil Court in a different suit filed by the objector himself. So much so, the objections of the objector were considered right upto the High Court, which did not find any merit in the same, rather the Courts came to the conclusion that the present objector is the creation of the judgment debtor and must vacate the premises in execution of the

ejectment order dated 22nd July, 1994 obtained by the decree-holder. Adjudication does not mean that framing of issues is always necessary for the executing Court. If the pleas raised by the objector in his objection petition have been considered *prima facie* by the executing Court and the first appellate Court, in my opinion it is a proper application of mind on behalf of both the Court, for which there should not be any grouse to the present objector Som Parkash. It is not the case that the objections of the objector were straightaway, rather the impugned order dated 9th May, 1996 passed by the Civil Judge (Senior Division), Sirsa, indicates that all the possible stands of the objector were duly considered and thereafter he came to the conclusion that the objections had no force. In para No. 5 of the order, the executing Court took into consideration all those factors which went right upto the High Court when it dismissed the revision of the objector on 17th January, 1996. The executing Court also took into consideration before dismissing the objections that the objector was not paying anything to the decree-holder but was enjoying the possession of the shop in dispute the ejectment order in favour of the decree-holder Santosh Rani. The plea of the objector that he was not party to the ejectment petition was also duly considered and the executing Court came to the conclusion that the objector had already exhausted his remedies regarding protection of his possession by means of filing a civil suit and his claim was not admitted even upto the High Court, therefore, it could not be held that he was not heard or that he was then entitled independently to protect his illegal possession. By opening a new chapter, as propounded by the objector, would mean to nullify all those valid orders which were obtained by the decree-holder in the suit for declaration filed by the objector. The contention of the objector regarding his independent possession was also considered on the basis of the authority reported as *Norralli Babul Thanewale v. K.M.M. Shetty and others* (3), and it was held that the

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decree holder was entitled to execute the decree for eviction against all persons who were in possession of the property. Even the order of the learned Additional District Judge shows that the objector failed to make out any case before him. In these circumstances it cannot be said that there was no adjudication by the executing Court as required under the provisions of Order 21 Rules 97 and 98, C.P.C. The data was made available to the executing Court by the objector in order to protect his possession and after due consideration that data was found without any substance. In the citation reported as *Subhendu Gupta's case* (supra) the objections of the objector were dismissed in a summary fashion without determining the right, title or interest of the objector and for that reason the impugned order of the said case was set aside. In *Noorduddin v. Dr. K. L. Anand* (4), the dictum of the Hon'ble Supreme Court is that the objections should be decided after considering the pleas of the objector. Of course, in the ejection order the present objector was not a party but the suit was definitely indicated at his instance. Firstly, he lost in the first appellate Court and then before the High Court. After losing the battle in the High Court against the successful decree holder now a shelter of the objections has been taken, which objections have been considered and rejected in the light of the earlier chain of litigation. In the present case the present objector does not get any independent right in the property. He failed to show his tenancy and in these circumstances his illegal possession pending adjudication could not be protected by passing any interim order. The counsel Shri Mohunta also relied upon an authority of the Supreme Court reported as *Ran Chandra Verma v. Shri Jagat Singh Singhi and others* (5), which authority is not applicable to the facts in hand. In this cited case the objector successfully showed to the executing Court his legal possession which was interpreted as a licence on behalf of the judgment

(4) 1995 (2) R.R.R. 556.

(5) 1996 (2) S.L.J. 1545.

debtor. That interpretation of the Court was illegal and for this reason the possession of the objector was protected. It may be mentioned here that at no point of time the objector ever made an effort to become a party to the ejection proceedings in support of the alleged allegations that he was claiming his tenancy since 1980.

(11) Summing up the above discussion, I hold that the term 'adjudication' as used under Order 21, Rules 97 and 98, C.P.C., does not start and end with the framing of the issues but it requires appreciation of the case of the objector and the documents in support of such objections. In the present case the executing Court did apply its mind to the objections as well as the various orders which were passed inter parties and then came to the conclusion that the objections of the objector had no force and he was bound to deliver the possession in pursuance of the ejection order being a person inducted by the original tenant Sunil Kumar.

(12) Resultantly, I do not find any merit in this revision petition and the same is hereby dismissed, leaving the parties to bear own costs.

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S.C.K.