

...Respondent Vs. Devinder Kumar Singla

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Court : Punjab and Haryana

Decided On : Jan-30-2014

Appellant : ...Respondent

Respondent : Devinder Kumar Singla

Judgement :

C.R. No.582 of 2014 (O&M) 1 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH C.R. No.582 of 2014 (O&M) Date of Decision :

30. 01.2014 Chander Bhushan AnandPetitioner Versus Devinder Kumar Singla
...Respondent CORAM : HON'BLE MR.JUSTICE MAHESH GROVER Present:-
Mr. S.M. Wadehra, Advocate for the petitioner MAHESH GROVER, J.

This revision petition is directed against the order of the learned Executing Court dated 29.05.2013 vide which the prayer of the petitioner invoked in terms of Order 21 Rule 29 C.P.C. to stay the proceedings in execution was declined. The facts may be noticed in brief. The petitioner is a tenant in the demised premises and faced proceedings under Section 13-A of the East Punjab Urban Rent Restriction Act, 1949(hereinafter called 'the Act'). The landlord had set up a plea that he is a specified landlord, owner of the building on the basis of a sale deed and since he had retired from public service, he required the premises for his own use and occupation. It would be pertinent to mention here that a similar petition was preferred by the landlord against another tenant residing in the demised premises and in this petition he had succeeded upto the High Court. There is no material to

suggest that whether the party Reena 2014.02.24 13:07 I attest to the accuracy and integrity of this document chandigarh C.R. No.582 of 2014 (O&M) 2 aggrieved from the orders of the High Court went in SLP or not. Suffice it to say that there is conclusive material to indicate that the proceedings had attained finality. In this petition, issues such as locus standi and the landlord being a specified landlord or not were all gone into upto the High Court and the plea of the tenant negated. This is necessary to state here because the learned Rent Controller while deciding the rent petition and declining leave to defend to the petitioner had relied extensively on the case of the co-tenant and the findings recorded by the Court therein. The petitioner contends primarily on the ground that had been agitated before the learned Rent Controller that the landlord retired on 31.10.2001 whereas the petition itself was filed on 30.10.2001 and, thus, he had not become a specified landlord on the day when he filed the petition and this should be a reason to discard the petition altogether. Learned counsel for the petitioner also questions the title of the landlord and states that the sale deed in his favour was not valid. The property initially belong to one Gopal Krishan Bhalla who was an allottee under the Chandigarh Administration who sold the property to the present respondent-landlord. The plea of the petitioner is that this sale was without any consideration. It is further the contention of the petitioner that till date, the property has not changed hands from the owner i.e. the Central Government. In this regard a separate suit has been filed by the petitioner which he initiated in the year 2002. The said suit is still pending. The order of the learned Rent Controller was challenged Reena 2014.02.24 13:07 I attest to the accuracy and by the petitioner by way of revision which was dismissed and SLP integrity of this document chandigarh C.R. No.582 of 2014 (O&M) 3 preferred by him was also dismissed in the year 2012. The landlord then went up in execution and the petitioner filed his petition under Section 47 C.P.C. questioning once again the ownership and title of the respondent and raising a plea of fraud. These objections were dismissed on 02.01.2014. The petitioner then filed a review petition and according to the statement made by learned counsel for the petitioner before this Court when he realised that the review petition is likely to be dismissed, he filed the instant application under Order 21 Rule 29 C.P.C. seeking stay of the proceedings in execution on account of the pendency of the civil suit. The Executing Court

declined his prayer which is now the subject matter of challenge in the present petition. Learned counsel for the petitioner contends that the impugned order is erroneous and contrary to the provisions of Order 21 Rule 29 C.P.C. which envisages stay of the proceedings, if the matter pending adjudication is substantially an issue between the parties and has a bearing on the facts of the case. The impugned order would show that the respondent had approached this Court by way of a Civil Revision No.3615 of 2012 which had arisen from the denial of the learned trial Court seized of the proceedings in the Civil Suit initiated by the petitioner to treat the issue of maintainability of the suit on the ground of bar of res judicata as a preliminary issue. The respondent-landlord had raised an issue before the learned trial Court that in the proceedings before the Rent Controller, this issue of the respondent being the landlord and owner of the premises had been decided against the present petitioner and, Reena 2014.02.24 13:07 I attest to the accuracy and therefore, this ought to operate as res judicata rendering the integrity of this document chandigarh C.R. No.582 of 2014 (O&M) 4 maintainability of the civil suit in doubt. This Court while deciding the revision petition had observed as follows:- It is hereby clarified that the petitioner shall be at liberty to execute the order of ejectment, which he has obtained and in the manner of execution if there is any obstruction, the Executing Court shall pass an appropriate order on merits without minding the pendency of the civil suit between the same parties. Without prejudice to these observations, the trial Court shall take up the case instituted by the respondent and endeavour to dispose it of as expeditiously as possible and preferably within a period of one year.

. It was, thus, a clear direction to the Executing Court to proceed with the matter in execution unmindful of the pendency of the civil suit between the parties. The impugned order would show that the learned Executing Court has noticed precisely the above observation of this Court while declining the prayer under Order 21 Rule 29 C.P.C. and had issued warrants of possession. This Court has also perused the order of the learned Rent Controller and the order passed by this Court in Civil Revision No.6651 of 2010 decided on 04.03.2011 in which all the pleas raised by the petitioner, which obviously form part of his objection today as well, have been dealt with. His plea that the property had been purchased a day prior to the retirement and the relationship of the landlord and tenant being non-

existent were all gone into and answered in detail and it would be just and appropriate to extract the relevant observations of this Court which were ultimately tested in the SLP filed by the petitioner which Reena was dismissed in the year 2012:- 2014.02.24 13:07 I attest to the accuracy and integrity of this document chandigarh C.R. No.582 of 2014 (O&M) 5 The question posed in this case by the learned counsel for the tenant/petitioner is that the respondent/landlord who had acquired the ownership of the demised premises by virtue of a registered sale deed a day prior to his retirement could not have maintained the application under Section 13-A of the Act and supported his submission with the judgment cited as Ajmer Singh (Supra), Manoj Kumar Aggarwal (Supra) and Dr.D.N.Malhotra (Supra). All these judgments are inapplicable to the facts and circumstances of the present case because in the case of Ajmer Singh (Supra), the government servant had purchased the property two months after his retirement. In the case of Manoj Kumar Aggarwal (Supra), the landlord had retired on 31.3.2005 and rented out the premises on 1.4.2005. The question was thus as to whether the landlord who had rented out the premises after his retirement can seek eviction of the tenant.. It was held that relationship of landlord and tenant should exist at least a year prior to the date of retirement only then, he could invoke the jurisdiction of the Rent Controller under Section 13-A of the Act. In the present case, the tenant was also occupying the demised premises when the landlord had purchased the property a day before his retirement. Therefore, he stepped into the shoes of the owner. In the case of Dr.D.N.Malhotra (Supra), the landlord had retired from service in 1965 and rented out the premises in 1968 and in these circumstances, it was held that he cannot be considered to be the specified landlord under Section 2 (hh) of the Act. On the contrary, the judgment cited by the learned counsel for the respondent/landlord in the case of Deepak Suri (Supra) is fully applicable to the facts and circumstances of the present case because in that case, Reena 2014.02.24 13:07 the landlord had purchased the demised premises from I attest to the accuracy and integrity of this document chandigarh C.R. No.582 of 2014 (O&M) 6 his father only a day prior to his retirement. It was held by this Court that the application is maintainable under Section 13-A of the Act, which was dissected as under:- (i) Landlord within one year after the date of his retirement could apply to the Rent Controller; (ii) he is required to produce a certificate of a competent authority showing that he is

covered by Section 2 (hh) and that he was discharging his duty on a post in connection with the affairs of the Union of India or of a State; (iii) he is further required to file an affidavit stating that he did not own and possess any other suitable accommodation in the local area; and (iv) the provision has been tampered with a non obstante clause which would imply that despite any other provision, this section would be available to a landlord covered by Section 2 (hh). In view of the aforesaid discussion, I do not agree with the submission of the learned counsel for the petitioner as all the judgments cited are pertaining to the situation where either the property was purchased after retirement or the tenant was inducted thereafter. Hence, the judgment cited by the learned counsel for the respondent in Deepak Suri's Case (Supra)) is found to be answering the question raised by the learned counsel for the petitioner against him and as such, the first contention of learned counsel for the petitioner is hereby rejected. Coming to the second question about the relationship of landlord and tenant between the parties, learned counsel for the petitioner has submitted that if a tenant is not inducted by the person filing the petition or it is not proved that he had ever received rent from him, then there was no relationship of landlord and tenant Reena between the parties and a petition under Section 13-A of 2014.02.24 13:07 I attest to the accuracy and integrity of this document chandigarh C.R. No.582 of 2014 (O&M) 7 the Act is not maintainable. The judgment relied upon by him are in the cases of Krishan Kumar Khurana (Supra) and Rajinder Lal (Supra) which are distinguishable in view of the judgments relied upon by the learned counsel for the respondent in the cases of Randhir Singh (Supra) and Ram Sarup (Supra) because in the judgments which have been relied upon by the learned counsel for the petitioner, the effect of Section 2 (c) of the Act has not been argued before the Hon'ble Benches which is very much relevant and material in this regard as Section 2 (c) provides that a person who derives title from the earlier landlord would also be considered to be the landlord. To my mind, it is amply clear that a person could be the owner and landlord both but a landlord may not be the owner but where a person steps into the shoes of the earlier owner by virtue of transfer of the demised premises by a registered sale deed, he would certainly derive title from him in terms of Section 2 (c) of the Act and would also step into his shoes for the purpose of maintaining an application under Section 13-A of the Act. Thus, the

second contention raised by the learned counsel for the petitioner is also rejected.

. It is in this background that the Court has to view as to whether the application under Order 21 Rule 29 C.P.C. was bonafide attempt by the petitioner or only an indication of his tenacity to cling to the premises by exploiting and subverting the process of law. The Court wonders that if this Court had directed the Executing Court to proceed with the proceedings unmindful of the pendency of the civil suit inter se between the parties and also noticing the other facets of the case when the petitioner approached this Court by way of Reena 2014.02.24 13:07 I attest to the accuracy and integrity of this document chandigarh C.R. No.582 of 2014 (O&M) 8 revision i.e. C.R. No.6651 of 2010 against the order of learned Rent Controller and where such pleas were clearly negated, then where was the occasion for the petitioner to seek a restraint order. The Court is clearly of the opinion that it is a misadventure on the part of the litigant who has been unsuccessful till the Hon'ble Supreme Court in protecting his possession in rent proceedings and has sought to restrain and obstruct the execution by filing flimsy objections and that too, when the counsel was conscious of orders of this Court directing the Executing Court to proceed with the execution unmindful of the pendency of the civil suit. The suit itself and the issue raised therein at the behest of the petitioner who is prima facie an alien to the sale process would be debatable. Before parting with the order, the Court wishes to observe that it cannot be oblivious to such attempts made by unsuccessful litigants to thwart the legitimate rights of a decree-holder, particularly on the basis of misconceived advice of a legal professional with a mind of a maverick. The Court cannot ignore such cases where legal ethics are shown a scant respect and the process initiated on such advice frustrating the law and the rights of a decree-holder who has a hard earned decree in his favour. The counsels who impart professional advice are also the officers of the court. They are indeed expected to have a sense of commitment and loyalty to their clients as the legal ethics would also warrant, but at the same time, they cannot ignore the legitimate orders which have been passed by the courts of competent jurisdiction lending a finality to the rights of the parties. Such orders cannot be defeated by manipulative advice and Reena 2014.02.24 13:07 I attest to the accuracy and machinations to subvert the process of law where rights stand integrity of this document chandigarh C.R. No.582 of

2014 (O&M) 9 crystalized and such scurrilous attempts, if not defeated, is likely to result in unrest in the society and also result in loss of confidence in the entire judicial dispensation system besides leading to frustration and that too in an adversarial litigation at the hands of the person who has fought and lost but yet retains the crown of a victor while the one who has been successful is brought to his knees as a vanquished. Executions are important factors in the judicial dispensation system which need to be strengthened and not permitted to be frustrated at the hands of litigants supported by advice which may fail the test of ethics. To borrow the words of an accomplished legal professional who commented on the issue of legal ethics of the Bar and said in your dealings in and outside the court you should always bear in mind that every member of the bar is a trustee for the honour and prestige for the profession as a whole. The nobility of profession would be least if legitimate rights of a person are permitted to be defeated by the abuse of the law.. The Hon'ble Supreme Court in Criminal Appeal No.1108- 1115 of 2004 decided on 09.05.2011 titled as O.P.Sharma v. High Court of Punjab and Haryana laid down the following essence of the duties of an advocate and for the purposes of relevance paras 31 and 32 of the judgment are extracted here below :-

31. An advocate's duty is as important as that of a Judge. Advocates have a large responsibility towards the society. A client's relationship with his/her advocate is underlined by utmost trust. An advocate is expected to act with utmost sincerity and respect. Reena 2014.02.24 13:07 I attest to the accuracy and integrity of this document chandigarh C.R. No.582 of 2014 (O&M) 10 In all professional functions, an advocate should be diligent and his conduct should also be diligent and should conform to the requirements of the law by which an advocate plays a vital role in the preservation of society and justice system. An advocate is under an obligation to uphold the rule of law and ensure that the public justice system is enabled to function at its full potential. Any violation of the principles of professional ethics by an advocate is unfortunate and unacceptable. Ignoring even a minor violation/misconduct militates against the fundamental foundation of the public justice system. An advocate should be dignified in his dealings to the Court, to his fellow lawyers and to the litigants. He should have integrity in abundance and should never do anything that erodes his credibility. An advocate has a duty to

enlighten and encourage the juniors in the profession. An ideal advocate should believe that the legal profession has an element of service also and associates with legal service activities. Most importantly, he should faithfully abide by the standards of professional conduct and etiquette prescribed by the Bar Council of India in Chapter II, Part VI of the Bar Council of India Rules. 32) As a rule, an Advocate being a member of the legal profession has a social duty to show the people a beacon of light by his conduct and actions rather than being adamant on an unwarranted and uncalled for issue.

. Besides, the duties culled out for an officer of the court are as under :-

1. An advocate shall, during the presentation of his case Reena and while otherwise acting before a court, conduct himself 2014.02.24 13:07 I attest to the accuracy and integrity of this document chandigarh with dignity and self-respect. He shall not be C.R. No.582 of 2014 (O&M) 11 servile and whenever there is proper ground for serious complaint against a judicial officer, it shall be his right and duty to submit his grievance to proper authorities.
2. An advocate shall maintain towards the courts a respectful attitude, bearing in mind that the dignity of the judicial office is essential for the survival of a free community.
3. An advocate shall not influence the decision of a court by any illegal or improper means. Private communications with a judge relating to a pending case are forbidden.
4. An advocate shall use his best efforts to restrain and prevent his client from resorting to sharp or unfair practices or from doing anything in relation to the court, opposing counsel or parties which the advocates himself ought not to do. An advocate shall refuse to represent the client who persists in such improper conduct. He shall not consider himself a mere mouth-piece of the client, and shall exercise his own judgment in the use of restrained language in correspondence, avoiding scurrilous attacks in pleadings, and using intemperate language during arguments in court.

5. An advocate shall appear in court at all times only in the prescribed dress, and his appearance shall always be presentable.
6. An advocate shall not enter appearance, act, plead or practise in any way before a court, Tribunal or Authority mentioned in Section 30 of the Act, if the sole or any member thereof is related to the advocate as father, grand-father, son, grand-son, uncle, brother, nephew, first cousin, husband, wife, mother, daughter, sister, aunt, niece, father-in-law, mother-in-law, son-in-law, brother-in-law, daughter-in-law or sister-in-law. Reena 2014.02.24 13:07 For the purposes of this rule, Court shall mean a Court, I attest to the accuracy and integrity of this document chandigarh C.R. No.582 of 2014 (O&M) 12 Bench or Tribunal in which above mentioned relation of the Advocate is a Judge, Member or the Presiding Officer.
7. An advocate shall not wear bands or gown in public places other than in courts except on such ceremonial occasions and at such places as the Bar Council of India or the court may prescribe.
8. An advocate shall not appear in or before any court or tribunal or any other authority for or against an organisation or an institution, society or corporation, if he is a member of the Executive Committee of such organisation or institution or society or corporation. Executive Committee., by whatever name it may be called, shall include any Committee or body of persons which, for the time being, is vested with the general management of the affairs of the organisation or institution, society or corporation. Provided that this rule shall not apply to such a member appearing as amicus curiae. or without a fee on behalf of a Bar Council, Incorporated Law Society or a Bar Association.
9. An Advocate should not act or plead in any matter in which he is himself peculiarly interested.
- . In R.D.Saxena v. Balram Prasad Sharma, (2000) 7 SCC264 the Hon'ble Supreme Court observed as follows : In our country, admittedly, a social duty is cast upon the legal profession to show the people beckon (sic beacon) light by their conduct and actions. The poor, uneducated and exploited mass of the people

need a helping hand from the legal profession, admittedly acknowledged as a most respectable profession. No effort should be made or allowed to be made by which a litigant could be deprived of his rights, statutory as well as constitutional, by an advocate only on account of the exalted position conferred upon him under the judicial system prevalent in the country....

. To quote William Reece Smith Jr., a Professor of Law, Stetson University, Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living.

. To sum up Legal profession is noble profession. The nobility of the legal profession is maintained by the adherence and observance of a set of professional norms by those who adopt this profession. It is known as legal ethics or the ethics of the legal profession. The fundamental of the legal ethics is to maintain the honour and dignity of the law profession, to secure a spirit of friendly cooperation between Bench and Bar in the promotion of highest standard of justice, to establish honorable and fair dealings of the counsel with his client, opponent and witness, to establish a spirit of brotherhood with bar.

. The Court is, in fact, constrained to say all this as it has come across three cases in quick succession apart from the one in hand where despite conclusive orders of the High Court or the Hon'ble Supreme Court crystalising the rights of the parties and despite undertakings given by one or the other litigant, the same has been violated or the rights subverted on account of initiation of misconceived proceedings to blatantly defeat the orders passed by the courts of competent jurisdiction either by filing civil suits, or objections which question the very legitimacy of the rights already determined between the parties. COCP No.488 of 2013 (Trilok Chand v. Jagdish Reena 2014.02.24 13:07 I attest to the accuracy and Parshad) had arisen from a case where the tenant had been integrity of this document chandigarh C.R. No.582 of 2014 (O&M) 14 unsuccessful right upto the Hon'ble Supreme Court in the proceedings preferred by the landlord under Section

13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973. Before the Supreme Court he agreed to furnish an undertaking to the learned Rent Controller to the effect that he shall not induct any other person in the suit premises and shall hand over vacant and peaceful possession of the premises to the respondent/landlord on or before the 30th day of November, 2013 and that further he shall pay to the landlord arrears of rent, if any, within one month and shall also pay future compensation for use and occupation of the suit premises month by month before the 10th day of every succeeding month. The tenant furnished the undertaking in terms of the orders of the Hon'ble Supreme Court but did not pay the arrears as undertaken by him and instead of handing over the possession to the landlord he tenaciously clung on to it leading to the filing of an execution petition before the court. In these proceedings the tenant filed objections disputing the ownership of the landlord and claiming that the Municipal Council was the owner. It is in these circumstances that the contempt petition was initiated. When notice in the contempt proceedings was issued, the tenant displayed reluctance to appear before the court and did so only when bailable warrants were issued. Even though in the contempt petition the possession was finally given to the landlord but the fact remains that an objection was preferred by the tenant in the execution proceedings questioning the very title of the landlord when no such plea was ever raised by him in Reena 2014.02.24 13:07 I attest to the accuracy and the proceedings under the Rent Act in which he had been integrity of this document chandigarh C.R. No.582 of 2014 (O&M) 15 unsuccessful. In this manner the tenant sought to defeat not only the orders passed by the Courts but also sought to frustrate the legitimate request of possession of the landlord. This attempt could not have been possible but for the legal advice given to him. In COCP No.1784 of 2013 (Jyotsna v. Kalpana and others) the landlord had sought the eviction of the tenant by way of a civil suit which was decreed in his favour but the first appellate court reversed the findings. In RSA the tenant gave an undertaking to the Court that he would vacate the premises by 30.6.2013. When the possession was not given, proceedings under the Contempt of Courts Act were initiated. Upon being summoned the occupant of the premises stated that they had vacated the demised premises but took up the plea that their step-sister is in possession of the premises and she has initiated a civil suit against the landlord/owner. It was also

stated before this Court by the contemnors that they had no concern with their sister and are not on speaking terms. Photo copy of the plaint filed by the sister of the contemnors revealed that it was initiated almost around the time when the occupants(contemnors) were required to vacate the premises on the strength of the undertaking given to this Court which was further indicative of the fact that it was a ploy intended to defeat the rights of the landlord/owner to have access to the possession of his property. The sister of the contemnors was obviously never in possession and had it been so, it would have been mentioned in the pleadings of the parties in the earlier proceedings. This Court in the contempt proceedings observed Reena 2014.02.24 13:07 I attest to the accuracy and inferentially the present respondents No.3 and 4 (contemnors) have integrity of this document chandigarh C.R. No.582 of 2014 (O&M) 16 inducted their own sister to defeat the right of the petitioner and deprive her of the possession. These respondents by their conduct have clearly violated the undertaking given by them before the Court and have rather tried to overreach the Court in the process.

. The contemnors who were present in the Court were unable to offer an explanation as to how their step-sister, who was staying in Jalandhar, came to possess the property in district Yamunanagar when she had no concern with the contemnors or with the landlord. Upon being given an opportunity during the course of the day when the hearing was going on, the possession was delivered to the landlord/owner within hours when the contemnors were faced with the prospect of adverse orders in the contempt petition. In COCP No.2352 of 2012 (Devinder Singh v. Sukhdev Thapar and another) the tenant faced eviction proceedings under the Rent Restriction Act upto the High Court. Before this Court in CR No.2268 of 2011 the learned counsel appearing for the tenant prayed for a reasonable time to vacate the premises which was granted and directions were issued to the tenant to hand over the possession after one year i.e. before 31.7.2012 subject to payment of arrears of rent and advance rent by the 10th day of every month. A undertaking was given by the petitioner before the learned Rent Controller in terms of the aforesaid order of this Court, but despite the undertaking possession was not given and instead a civil suit was got filed by the tenant from his brother-in-law praying for permanent injunction to restrain the landlord from interfering in the actual physical and peaceful possession of the shop in question

which were the demised Reena 2014.02.24 13:07 I attest to the accuracy and premises. The plaintiff in the suit, namely brother-in-law of the tenant, integrity of this document chandigarh C.R. No.582 of 2014 (O&M) 17 had pleaded that the shop had been let out by the landlord on rent w.e.f.1.6.2012 at a monthly rent of Rs.3,600/- inclusive of house-tax. The tenant then filed a suit praying for restoration of possession on the ground that since the landlord had got the premises vacated on the ground of personal necessity and instead of occupying it, he had rented it out to Sunil Kumar (brother-in-law of the tenant). This Court concluded that it was a clear act of collusion between the tenant and his brother-in-law and decided to proceed against them under the provisions of the Contempt of Courts Act. Evidently, it was a clever ploy adopted by the tenant where he successfully honoured the undertaking but at the same time defeated the process of law altogether and deprived the landlord of his legitimate possession by inducting his brother-in-law in the premises. When confronted with the prospect of adverse order under the Contempt of Courts Act, possession was immediately restored to the landlord within hours and the civil suit withdrawn. There is a common thread running through all these cases including the one in hand. The successful litigants rights were sought to be thwarted by initiation of civil suits in a most manipulative manner. These cases are demonstrative of the unethical advice given by the legal professionals to defeat the orders of this Court in executions or otherwise and further to defeat the legitimate claims which have been determined by the courts conclusively. To the mind of this Court, this is subversion of the process of law and defiance of the orders of the Court as also being Reena 2014.02.24 13:07 I attest to the accuracy and obstructive to the cause of justice. Such acts may not only result in integrity of this document chandigarh C.R. No.582 of 2014 (O&M) 18 acute unrest in the society the members of which would be compelled to perceive the judicial dispensation system inefficient and possibly impotent and the Courts' existence itself may be imperiled if it is unable to deliver and protect the rights of the citizenry for which it was conceived. It would also result in unwarranted litigation and unnecessary burden on courts themselves in turn resulting in wastage of public time and money. Therefore, this Court by virtue of this order wishes to caution not only the courts but also the legal professionals who indulge in imparting such dishonest advice. The Court, thus, directs all the

civil and executing courts that whenever an execution is preferred and the objections of such kind exemplified above (these examples are merely intended to bring home the point and not necessarily intended to serve as a straight- jacket formula for the courts to adopt) are raised then it is for the courts to minutely examine the intent and content of the objections, and in cases of suits, the plaints presented before them and see if they have the effect of defeating the rights which stand defined conclusively by the orders of Courts in earlier proceedings and whether such objections are intended to defeat the rights of the successful litigants and dismiss them upon forming an opinion. To separate wheat from chaff with great circumspection is the watchword, lest the genuine cases suffer. Upon a suit or objection being instituted and it being disclosed by the defendant that the plaintiff has not placed on record details of the earlier litigations as per his obligation under Order 7 Reena 2014.02.24 13:07 I attest to the accuracy and Rule 1(j), the trial Court should resort to the provisions of Order 7 integrity of this document chandigarh C.R. No.582 of 2014 (O&M) 19 Rule 11 CPC. For reference Order 7 Rule 1(j) is extracted below as is Order 7 Rule 11:- Order 7 Rule 1(j) a statement to the effect that no suit between the same parties, or between parties under whom they or any of them claim, litigating on the same grounds has been previously instituted or finally decided by a Court of competent jurisdiction or limited jurisdiction, and if so, with what results.

. 11.Rejection of plaint. - The plaint shall be rejected in the following cases:- (a) where it does not disclose a cause of action; (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so; (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court, to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so; (d) where the suit appears from the statement in the plaint to be barred by any law; (e) where it is not filed in duplicate; (f) where the plaintiff fails to comply with the provisions of rule 9. Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite

stamp-paper as the case may be. Reena 2014.02.24 13:07 I attest to the accuracy and integrity of this document. It is to be filed within the time fixed by the Court and that refusal to do so would cause grave injustice to the plaintiff. The Courts would do well at this stage of determining the objection of the defendant to pass a detailed speaking order and also take cognizance of the conduct of the parties to determine whether the process initiated is abusive of law and obstructionist in character to the cause of justice and decline interference in suits and objections as the case may be. In the civil suits preferred raising up pleas contrary to the well defined and determined rights of the parties the court should not hesitate to take recourse to the provisions under Order 7 Rule 11 CPC when such facts are brought to their notice and pass reasoned orders and if they come to the conclusion that it is an attempt to frustrate the rights of a decree-holder in some other proceedings, then it should not hesitate to dismiss the suit at the threshold besides taking recourse to referring the matter to the High Court for appropriate action against the person delivering wrongful advice and for nullifying such proceedings in case the trial Court perceives an obstacle and legal hurdle in doing so. It has to be kept in mind that an Advocate cannot escape the responsibility for drafting petitions and pleadings and, hence, a great responsibility rests on his shoulders to do so with great sense of professionalism as the matter drafted by an Advocate constitutes the sum and substance of the grievance of a litigant. In *Radha Mohan Lal vs. Rajasthan High Court*, (2003) 3 Supreme Court Cases 427, the Hon'ble Supreme Court while placing reliance on a decision of the Constitutional Bench in *M.Y.* I attest to the accuracy and integrity of this document. Chandigarh C.R. No.582 of 2014 (O&M) 21 *Shareef* (AIR 1955 SC19) and *Shamsher Singh Bedi's* case held as follows:-

11. In *Shamsher Singh Bedi v. High Court of Punjab & Haryana*, (1996) 7 SCC 99 this Court held that an advocate cannot escape his responsibility for drafting a scandalous notice to a Magistrate on the ground that he did so in his professional capacity.

12. An advocate is not merely an agent or servant of his client. He is an officer of the Court. He owes a duty towards the Court. There can be nothing more serious

than an act of an advocate if it tends to impede, obstruct or prevent the administration of law or it destroys the confidence of the people in such administration.

. This Court would perceive this to be an obstruction in the cause of justice and hence a contumacious conduct. It can not be believed that a counsel would not ascertain all the facts before imparting advice. When the Trial Courts/Executing Courts conclude as such they should send a report to the Registrar General of the High Court who shall place it before the appropriate Bench after obtaining orders from Hon'ble the Chief Justice. All the Courts before whom execution of civil court decrees in possession suits, partition suits, rent proceedings or money decrees are pending, will be required to look into the case files to examine the issue in the light of what has been stated above and pass appropriate orders. This will help speed up the restoration of the rightful order. Reena This Court shall determine as to whether the objector and 2014.02.24 13:07 I attest to the accuracy and integrity of this document chandigarh C.R. No.582 of 2014 (O&M) 22 his counsel are to be proceeded against under the contempt jurisdiction and may also refer the matter to the Bar Council for action. This Court has ample power to make such reference even suo moto of Hon'ble Supreme Court as extracted below in the case of Mr. 'G' a Senior Advocate of the Supreme Court vs. The Hon'ble Chief Justice and Judges of the High Court of judicature at Bombay, AIR 1954 SC560 and restore the status as per the terms of the decree that has attained finality or not:- (5) The next question is whether an oral order is enough. The Bar Councils Act does not lay down any procedure. All it says is - (6) Section 10(2): the High Court may of its own motion so refer any case in which it has otherwise reason to believe that any such advocate has been so guilty.

. and Section 11(2) says - The Tribunal shall consist of not less than three members of the Bar Council appointed for the purpose of the inquiry by the Chief Justice.

. (7) We agree it is necessary that there should be some record of the order on the files but, in our opinion, the order itself need not be a written one; it can be an oral order given to a proper officer of the Court. In the present case, the letter No, G-

1003 dated 29.4.1953 of the Prothonotary to the Registrar and the letter No.E. 41-09/53 dated the 1st May 1953 of the Registrar to the Bar Council (office copies of which were retained on the files) are a sufficient record of the making of the order. Mr. 'G' was supplied with copies of these letters and so was aware of the fact that order had been issued. As a matter of fact, we have seen the originals of the High Court's Reena office files and find that the names of the three members 2014.02.24 13:07 I attest to the accuracy and integrity of this document of the Tribunal are in the Chief Justice's handwriting with Chandigarh C.R. No.582 of 2014 (O&M) 23 his initials underneath. That is an additional record of the making of the order. We hold that an order recorded in the manner set out above is sufficient for the purposes of Section 10(2) and 11(2) of the Bar Councils Act and hold that the Tribunal was validly appointed. (8) Mr. G's next point is that there was no complaint to the High Court and so it had no jurisdiction to refer the matter to the Tribunal. This ignores the fact that the High Court can refer a matter of this kind of its own motion under Section 10(2) of the Bar Councils Act.

. Even though the above observations stemmed from the provisions of the Bar Councils' Act (now repealed), the fact remains that despite the above, the High Courts' power in this regard is unfettered and it can on the basis of the facts brought before it conclude about the misconduct to refer the matter to the Bar Council for appropriate action under Section 35 of the Advocates Act, 1961. Apart from the contumacious content of such proceedings, this Court in the exercise of its jurisdiction will not hesitate to set at naught the frivolous objections and obstructionist suit proceedings by nullifying them and would also restore the possession to the rightful claimants whose rights have been determined in the Court proceedings. It would also inflict punishment in terms of the Contempt of Courts Act besides imposing deterrent costs. The Hon'ble Supreme Court in Delhi Development Authority vs. Skipper Construction Company (P) Ltd. and another, AIR 1996 SC2005 has observed as follows:- 17. The contemnor should not be allowed to enjoy or Reena retain the fruits of his contempt":

2014. 02.24 13:07 I attest to the accuracy and integrity of this document Chandigarh The principle that a contemnor ought not to be C.R. No.582 of 2014 (O&M) 24 permitted to enjoy and/or keep the fruits of his contempt is well-settled.

In Mohd.Idris v. R.J.

Babuji [1985 (1) S.C.R.598]., this Court held clearly that undergoing the punishment for contempt does not mean that the Court is not entitled to give appropriate directions for remedying and rectifying the things done in violation of its Orders. The petitioners therein had given an undertaking to the Bombay High Court. They acted in breach of it. A learned Single Judge held them guilty of contempt and imposed a sentence of one months imprisonment. In addition thereto, the learned Single Judge made appropriate directions to remedy the breach of undertaking. It was contended before this Court that the learned Judge was not justified in giving the aforesaid directions in addition to punishing the petitioners for contempt of court. The argument was rejected holding that "the Single Judge was quite right in giving appropriate directions to close the breach (of undertaking). 18 - 20 ** ** ** 21. There is no doubt that this salutary rule has to be applied and given effect to by this Court, if necessary, by over-ruling any procedural or other- technical objections. Article 129- is a constitutional power and when exercised in tandem with Article 142, all such objections should give away. The Court must ensure full justice between the parties before it. Further in All Bengal Excise Licensees Association vs. Raghavendra Singh and others, 2007 AIR(SC) 1386, it has been observed as follows: In the instant case, the respondents have conducted the auction quite contrary to and in violation of an injunction Reena 2014.02.24 13:07 I attest to the accuracy and order passed by the High Court. Courts have held in a integrity of this document chandigarh C.R. No.582 of 2014 (O&M) 25 catena of decisions that where in violation of a restraint order or an injunction order against a party, something has been done in disobedience, it will be the duty of the Court as a policy to set the wrong right and not allow the perpetuation of the wrong doing. In our opinion, the inherent power will not only be available under Section 151 CPC as available to us in such a case but it is bound to be exercised in that manner in the interest of justice and public interest. As rightly observed by the Full Bench of the Madras High Court in AIR1975 Madras 270, that as a matter of judicial policy the Court should guard against itself being stultified in circumstances like this by holding that it is powerless to undo a wrong done in disobedience of the Court's orders. We, therefore, cancel all the auctions held on 20, 21 and 22.03.2005 and direct the

respondent Nos.1-4 not to allow the successful bidders to continue the business and shall stop them forthwith and submit a report to this Court of strict compliance. We make it clear that we are not expressing any opinion on the merits of the claim made by the appellant Association in the writ petition filed by them before the High Court which is pending. It is high time that the Courts wake up to this malaise. A hard earned decree by a litigant cannot be reduced to a scrap of paper because of the attempts of mavericks who through these unfounded objections or proceedings tend to introduce an anarchic order. All pending executions of the kind be given a fresh look by the concerned Courts and they be put on a fast track in light of what has been said above. For the aforesaid reasons, the revision petition is Reena dismissed and a specific direction is given to the Executing Court to 2014.02.24 13:07 I attest to the accuracy and integrity of this document chandigarh C.R. No.582 of 2014 (O&M) 26 proceed with the execution by restoring possession to the respondent, in case not already done and noticing the tenacity of the petitioner immediately grant police help for such execution forthwith without any delay. Copy of this order be sent to the Court concerned. At this stage, the Court was informed that possession is being handed over to the respondent. The Court would have proceeded against the petitioner and his counsel on the lines of what has been observed earlier but deems it appropriate to bury the cause (in the present petition) here only for the reason that possession is being given now voluntarily as stated before this Court and, thus, deems this to be a redeeming feature and while accepting the statement made by learned counsel for the petitioner at bar warns him to be careful in future. In case the statement made by the counsel for the petitioner in regard to the handing over the possession is found to be incorrect, the respondent would be at liberty to apprise this Court, whereupon contempt proceedings would be initiated against the petitioner and his counsel. The trial Court before whom the suit is pending questioning the title of the respondent shall pass orders in light of the above within three weeks after due notice to the plaintiff. Copy of the order be sent to the Registrar to despatch it to all the District Courts of Punjab and Haryana. January 30, 2014 (Mahesh Grover) Reena reena 2014.02.24 13:07 Judge I attest to the accuracy and integrity of this document chandigarh