

Court No. - 4

Case :- MATTERS UNDER ARTICLE 227 No. - 11864 of 2022

Petitioner :- Afzal Hussain

Respondent :- Gulfaz And 10 Others

Counsel for Petitioner :- Gaurav Sharma

Counsel for Respondent :- Ashish Mishra

Hon'ble Prakash Padia,J.

1. The following order was passed on 20.12.2023 :-

"Heard Sri Gaurav Sharma, learned counsel for the petitioner.

This is a case where the petitioner is seeking direction to the executing court to pass an effective order of execution in a pending execution case no. 7 of 2013 which has arisen out of final judgment and order dated 23.07.2002 in Revision No. 263 of 1997, whereby, the S.C.C. Suit of the petitioner being S.C.C. Suit No. 248 of 1992 was decreed. The said order was further challenged before this Court in Writ - A No. 32351 of 2002 and the said writ petition was dismissed on merits, however, in that case the tenant gave an undertaking to vacate the premises within a period of four months and was to file undertaking before the trial court. This order was passed by the court on 02.05.2012 and the operative portion runs in paragraph nos. 19, 20 & 21 which run as under:

"19. Lastly, learned counsel for the petitioner urged that at least four months' time may be granted to him for vacating the said shop. The learned counsel for the landlord did not raise any objection to it.

20. As urged by the learned counsel for the petitioners, four months' time is granted to the petitioner to vacate the premises in dispute provided he gives his undertaking in the form of an affidavit before the prescribed authority within one month from today specifically stating therein that he will handover the peaceful possession of the said accommodation to the respondents without inducting any third person within a period of four months from today and will pay the entire arrears of rent including the rent at the current rate upto the date of delivery of the possession, as indicated herein above.

21. In the event of default of any of the aforesaid conditions, the respondents will be at liberty to evict the petitioners with the aid of the police force."

However, when he did not honor his own undertaking, the landlord was left with no other option but to file an execution case which was registered as Case No. 7 of 2013 in which again the tenant-respondent filed an objection on 03.10.2015 under Section 47 of Code of Civil Procedure, 1908 which was registered as Misc. Case No. 7 of 2015 and then the same was dismissed on 03.10.2015, against that order of the executing court, respondent filed S.C.C. Revision which was also disposed vide order dated 30.03.2019.

However, because of the pendency of execution case and no order finally being passed, the tenant respondent did not vacate the premises and further demolished the standing shop making the

land flat and using it as a Washing Bay for two wheelers. In this connection, learned counsel for the petitioner has drawn the attention of the Court towards the report submitted by the Court Amin on 25.01.2021 which has been brought on record as Annexure No. 5 to the writ petition. He submits that after submission of report only notices were issued and in spite of the parties appearing in the case, no final order has been passed.

In the circumspect of the entire incidences that have taken place in the case, it clearly transpires that the tenant has been trying to somehow defeat the very decree and is involved in gross abuse of process of court and law. It is equally unfortunate that the executing court has not found it an appropriate case to get the premises in question vacated and delivered to the petitioner, may be the shop has been demolished but the land upon which the shop is standing is being utilized by the tenant.

In the circumstances, as a new Amin Commissioner's report has been submitted, it is hereby provided that the executing court shall now be passing a final order in the matter of execution pending in execution case no. 7 of 2013 within a period of 30 days from the date of presentation of certified copy of this order.

A copy of this order shall be served upon Sri Ashish Mishra, learned counsel for the subordinate courts in the High Court who shall submit a compliance report in the form of instructions by the next date fixed.

List this matter on 13.02.2023 amongst top 10 cases of the list."

2. Pursuant to the same, report submitted by the Presiding Officer dated 13.02.2023 is already on record. It is stated in the aforesaid report that the Presiding Officer has joined very recently and he will decide the matter by fixing short dates.

3. List has been revised. Nobody is present on behalf of petitioner though Shri Ashish Mishra, learned counsel is present on behalf of High Court.

4. It is informed by Shri Ashish Mishra, learned counsel for the High Court that pursuant to the orders passed in the execution proceedings possession has already been handed over to the landlord. In so far as arrears of payment is concerned next date fixed in the matter is 08.12.2023.

5. In this view of the matter, though counsel for the petitioner is not present the present petition is disposed of directing the executing court to take a decision in the matter expeditiously.

6. In case petitioner is still aggrieved he is free to move a recall application within two weeks.

Order Date :- 23.11.2023

Pramod Tripathi