

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 2780 of 2015 (O&M)
Date of decision: 21.5.2015

Dr. (Mrs.) Veena Anand

.. Petitioner

v.

Oriental Bank of Commerce

.. Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Amandeep Singh Talwar, Advocate for the petitioner.

Mr. R. N. Lohan, Advocate for the respondent.

...

Rajesh Bindal J.

The plaintiff has filed the present petition seeking quashing of the orders dated 13.4.2015 and 21.4.2015, passed by the learned court below, and further for a direction to the learned court below to pass final order on the application filed by the petitioner under Order 20 Rule 12 CPC in the suit filed by her.

Learned counsel for the petitioner submitted that the petitioner filed a suit for possession, recovery of damages for use and occupation and mesne profits. The property in dispute was leased out by the petitioner to the respondent-bank. As the lease deed was admitted by the respondent in the written statement filed, partly the suit was decreed for possession under Order 12 Rule 6 CPC, against which the respondent-bank is in appeal before the lower appellate court. The matter regarding recovery of damages for use and occupation and future mesne profits is pending before the trial court, in which entire evidence has been led. As the judgment was not delivered, application was filed by the petitioner for pronouncement of order under

Order 20 Rule 12 CPC. The learned court below has wrongly kept the same pending till the decision of appeal, as the same has no bearing in the case. Determination of damages for use and occupation and mesne profits is independent to relief of possession on expiry of lease period.

The appeal is stated to be listed on 7.7.2015.

On the other hand, learned counsel for the respondent-bank submitted that as it was a case of fraud, the bank had filed counter-claim. Actually the area rented out to the bank was 1,922 square feet, whereas in terms of the conveyance deed registered in favour of the petitioner by the builder, it was shown as 2,750 square feet which was shown in the rent deed executed. Excess rent of 828 square feet was paid to the petitioner for the entire period. He further submitted that the rent, as initially agreed, was regularly paid. Learned counsel further submitted that relief of possession and mesne profits are inter-connected. In case the appeal is directed to be decided early and thereafter the pending reliefs claimed in the suit, the same will solve the problem.

Heard learned counsel for the parties and perused the paper book.

The undisputed facts are that the suit filed by the petitioner-plaintiff for claiming possession of the property in dispute on alleged expiry of period of lease and recovery of mesne profits and damages for use and occupation was partly decreed by the trial court under Order 12 Rule 6 CPC granting relief of possession. The issue regarding determination of rent for use and occupation and mesne profits remained pending. Against the judgment of the trial court passed under Order 12 Rule 6 CPC, the respondent-bank is in appeal, which is stated to be pending for 7.7.2015. The prayer in the present petition is for a direction to the trial court to decide the remaining issues, which have been kept pending.

In my opinion, in the facts and circumstances of the case, the matter can be resolved with a direction to the learned lower appellate court to decide the appeal filed by the respondent-bank pending for 7.7.2015 within a period of three months from the next date of hearing. After the decision thereof, the pending claims in the suit shall be decided by the trial

court within two months thereafter, as it is claimed by counsel for the petitioner that entire evidence has already been led. The same shall be subject to any order passed in any remedy availed by the parties to the dispute against the order passed in the appeal.

The present petition stands disposed of accordingly.

(Rajesh Bindal)
Judge

21.5.2015
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