IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No.3194 of 2014(O&M)
Date of decision: 05.02.2015

Naresh Kumar

....Petitioner

Versus

Bijender Kumar ...Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr. Santosh Kumar Sharma, Advocate for the petitioner.

Mr. Shiv Kumar, Advocate for the respondent.

****

G.S.Sandhawalia J.(Oral)

Challenge in the present revision petition filed by the tenant is to the order dated 12.3.2014 whereby the Appellate Authority, Palwal had fixed the mesne profits at ₹ 12,000/- per month from the date of eviction order dated 19.2.2014 which was to be paid within 15 days. The relevant part reads as under:-

> "Hence, considering overall facts and circumstances of the case and the citations referred above, I deem it fit to stay the operation of the impugned judgment dated 19.2.2014 subject to payment of Rs.12,000/- per month as use and occupation charges i.e. Rs.400/- per day, which must be the minimum prevailing rent in the area, to be paid by the appellant-tenant from the date of the impugned judgment, besides the arrears of rent, if any, within 15 days from today and further use and occupation charges on or before 7th of every month, till the decision of this appeal.
>
> It is made clear, that in case, the appellant-tenant would not make the payment of upto date use and occupation charges at the above rate within fifteen days, in that event, this order shall stand automatically cancelled. Resultantly, the application for stay of operation of the impugned judgment filed by him shall also stand rejected for all intents and purposes. The application is disposed of accordingly.
>
> Now to come up on 12.8.2014 for arguments. In the meanwhile, lower Court file be also requisitioned. Dasti date given.

PRADEEP KUMAR ARORA
2015.02.10 10:42
I attest the accuracy and authenticity of this document
Punjab and Haryana High Court, Chandigarh

due to heavy pendency of cases and summer vacation in between."

Counsel for the respondent has filed an application for preponing the date of hearing and brought to the notice of this Court that earlier the present petitioner has approached this Court by way of filing Civil Revision No.2121 of 2014 which was dismissed on 21.3.2014 with the condition that he would deposit the mesne profits within two weeks from that day. The order reads as under:-

> "Learned counsel for the petitioner has submitted that he may be permitted to withdraw the petition.
>
> Dismissed as withdrawn.
>
> However, petitioner is granted two weeks time from today to enable him to deposit the mesne profits in compliance of the impugned order dated 12.3.2014.
>
> Sd/-
> March 21,2014 Sabina, Judge"

In spite of the said order being passed, the second revision petition has been filed on the same cause of action on 2.5.2014. However, the fact of filing of earlier Civil Revision was mentioned in paragraph 11 and incorporation was also done in the affidavit by hand. The said order was not brought to the notice of this Court when notice of motion was issued on 6.10.2014 and neither had it been appended with the petition. While issuing notice of motion, this Court restricted the mesne profits to ₹ 6000/- per month i.e. 50% of the impugned amount and it was directed that the same will be paid on the 7th of every month in advance and the arrears would also be cleared in this ratio within one month from that day. The order reads as under:-

> "Counsel for the petitioner assails order dated 12.3.2014 passed by the Appellate Authority whereby mesne profits have been fixed @ Rs.12,000/- per month from the date of eviction. It is claimed that such increase from Rs.3750/- per month is without any foundation.
>
> Notice of motion returnable by 5.2.2015.
>
> Notice re: stay as well.
>
> Meanwhile, dispossession of the petitioner-tenant from the shop in question shall remain stayed subject to the condition that he

PRADEEP KUMAR ARORA
2015.02.10 10:42
I attest to the accuracy and integrity of this document
Punjab and Haryana High Court, Chandigarh

would continue paying Rs.6000/- per month i.e. 50% of the impugned amount on the 7th day of every month in advance and would also clear the arrears in this ratio within one month from today.

Sd/-

October 06, 2014 (Bharat Bhushan Parsoon)
Judge"

It is thus apparent that on account of concealment of fact the tenant who was supposed to deposit the mesne profits within a period of 15 days from 12.3.2014 @ ₹ 12,000/- and has continued to deny the said mesne profits which had been fixed by the Appellate Authority, Palwal.

Counsel for the petitioner, however, submits that order dated 6.10.2014 has been complied with and the mesne profits have been deposited.

Accordingly, keeping in view the conduct of the petitioner, the present revision petition is dismissed. It is clarified that the tenant shall deposit the complete mesne profits at the rate of ₹ 12,000/- per month from the date of eviction order dated 19.2.2014 within a period of one month from today. In addition to the said amount, he shall also pay an another sum of ₹ 25,000/- as costs for unnecessarily approaching this Court again and also forcing the respondent to engage a counsel. The said sum of ₹ 25,000/- shall be paid to the landlord. It is made clear that in case there is non compliance of this order, the Rent Controller, Hodel shall direct handing over the possession of the premises in question immediately.

Accordingly, the present revision petition is dismissed.

05.02.2015 (G.S.SANDHAWALIA)
Pka JUDGE

PRADEEP KUMAR ARORA
2015.02.10 10:42
I attest to the accuracy and integrity of this document
Punjab and Haryana High Court, Chandigarh