

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.4268 of 2015

Date of decision : 18.12.2015

Parveen Goyal

...Petitioner

Versus

Devender Minor and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. J.P. Sharma, Advocate for the petitioner.

Mr. Sourabh Goel, Advocate for respondent No.1.

AMIT RAWAL, J. (Oral)

The petitioner-Judgment Debtor is aggrieved of the order dated 07.05.2015, whereby application filed by DH in execution application No.228 of 2010 has been allowed.

Mr. J.P. Sharma, learned counsel appearing on behalf of petitioner-Judgment Debtor submits, that lower Appellate Court allowed the appeal filed by the Decree Holder vis-a-vis the mesne profits and ordered ₹2,000/- per month for the period of 2 years. The aforementioned amount has been deposited. However, in execution application, the Decree Holder is claiming amount w.e.f. 21.02.2003 to 03.03.2014 when the possession was

taken. However, the decree is silent to that effect, therefore, the trial Court has exceeded beyond the jurisdiction, much less, judgment and decree.

Mr. Sourabh Goel, learned counsel appearing on behalf of Decree Holder-respondent No.1 submits, that Executing Court cannot go beyond the decree. Order is perfect, legal and justified as the judgment and decree of the lower Appellate Court dated 30.08.2013 had attained finality, therefore, there is no illegality and perversity.

I have heard learned counsel for parties and appraised the paper book.

The operative part of the judgment dated 30.08.2013 passed by the lower Appellate Court reads thus:-

“27. As regard the contention that Devender appellant is entitled to mesne profit. There is no such pleadings in the counter claim to that effect in the suit filed by Bhola Ram appellant. No doubt, in counter claim filed in the suit filed by Parveen Goyal, it was claimed that a decree for mesne profit for use and occupation @ 2000/- per month for the last two years i.e. amount of Rs.48,000/- be also passed.

28. Undoubtedly, it has been established on the file that the possession of appellant was unauthorized. The appellant Devender has failed to establish on the file the exact date, month or year, when Parveen Goyal has encroached upon the shop in dispute. No doubt, during the deposition of DW1 Bhagwat Prashad, it has been surfaced, that the possession of Parveen continued since the year 2002. But a notice no.606, dated 12.12.2012 has been issued to Parveen Goyal and by taking that date till its vacation is entitled the rent has been deposited by Devender or Saroj Bala till vacation of the shop by

Parveen Goyal, appellant. Accordingly, Parveen Goyal is liable to pay the mesne profit for use and occupation of the shop in dispute as stated above and accordingly, relief in counter claim filed by Devender or Saroj in case filed by Parveen Goyal is hereby allowed, and judgment and decree is modified to that extent. However, finding of the learned trial Court on all the issues is reasoned and sustainable in the eyes of law. No interference is required from the Appellate Court. Both the appeals i.e. filed by Parveen Goyal and Bhola Ram are hereby dismissed. However, the appeal filed by Devender is hereby partly accepted with the observations made above, without any order of costs. Decree sheet be prepared, accordingly. File be consigned to the record room, after due compliance.”

The Executing Court vide impugned order has calculated the mesne profits till the possession of the property was handed over to the Decree Holder if it all there was any grievance with regard to the interpretation of the judgment and decree, nothing prevented the Judgment Debtor to seek clarification/modification of the judgment and decree dated 30.08.2013, in my view, the trial Court has rightly exercised the jurisdiction by entertaining the execution application, much less, dismissing the objection as it could not go behind the decree.

No ground is made out.

Dismissed.

In case, Judgment Debtor is aggrieved, he would be at liberty to seek clarification/modification of the judgment and decree dated 30.08.2013.

18.12.2015

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**(AMIT RAWAL)
JUDGE**