

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 4806 of 2015 (O&M)
Date of decision: 3.8.2015

Arvind

.. Petitioner

v.

Rajbir

.. Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Naresh Kaushik, Advocate for the petitioner.

...

Rajesh Bindal J.

Challenge in the present petition is to the order dated 20.7.2015, passed by the learned court below, whereby the application filed by the petitioner for restoration of possession of the shop in dispute, was dismissed.

Learned counsel for the petitioner submitted that the petitioner filed a suit for injunction claiming that he being a tenant under the respondent, his possession should not be disturbed. Vide order dated 25.10.2011, interim stay was granted. The respondent-defendant was restrained from dispossessing the petitioner-plaintiff except in due course of law. The interim stay continued, however, wrongly the suit was shown to be dismissed in default on 14.12.2012, though it was adjourned on that date to 14.1.2013. Immediately after coming to know about this fact, application for restoration was filed which was allowed on 5.2.2013. As the respondent had taken forcible possession of the property in dispute, the date on which interim stay was operative, the possession deserves to be restored. The application for restoration of possession was filed on 5.3.2013. As the facts in the case in hand are not in dispute, hence, the observation of the court

below that restoration of possession will depend on the evidence to be led by the parties, is totally erroneous.

After hearing learned counsel for the petitioner, I do not find any reason to interfere with the impugned order. It is not in dispute that after the possession of the property in dispute was taken by the respondent, the date of which is in dispute, the petitioner filed application for amendment of the suit claiming relief of mandatory injunction directing the respondent for restoration of possession of the suit property. The aforesaid amendment has been allowed. In case, the possession of the property in question is directed to be handed over to the petitioner merely by filing an application, the same would amount to grant of partial relief, as prayed for in the suit, without there being any evidence on record. As stated by learned counsel for the petitioner, the application filed by the petitioner under Order 39 Rule 2A CPC is still pending, meaning thereby it is yet to be established that possession was taken by the respondent in violation of the order passed by the court.

Considering the aforesaid factual matrix, I do not find any reason to interfere with the impugned order. Accordingly, the present petition is dismissed.

As an abundant caution, it is directed that any observation made in this order will not have any bearing on the application filed by the petitioner under Section 39 Rule 2A CPC.

(Rajesh Bindal)
Judge

3.8.2015
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