

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

**CR No.5962 of 2015 (O&M)
Date of decision: 21.09.2015**

Salim Khan

... Petitioner

Vs.

Krishan Kumar

... Respondent

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. Ajay Jain, Advocate
for the petitioner.

Mr. Anurag Jain, Advocate
for the respondent.

Mr. Chetan Mittal, Senior Advocate with
Mr. Mohinder S. Nain, Advocate
for the proposed respondents No.2 and 3.

AMIT RAWAL J.

The petitioner has approached this Court by challenging the order dated 09.09.2015, (Annexure P-11), whereby, the applications filed under Sections 151 and 144 of the Code of Civil Procedure (hereinafter referred to as the CPC) for providing police help for implementation of the interim order dated 25.06.2015 and restitution of the building consisting basement, ground floor, first floor and second floor constructed on property No.101/187/185, Ward No.2, situated at Tilak Bazaar, Inside Talaki Gate, Hisar, have been dismissed.

It would be apt to refer few facts.

The petitioner-plaintiff filed a suit for permanent (prohibitory) injunction restraining defendant-Krishan Kumar and his family members from interfering in the peaceful continuous possession of the plaintiff, as tenant, over the aforesaid building and further, from forcibly dispossessing him from the above mentioned building or changing the nature of the said property, without, due process of law, on the premise, that as per the rent note dated 24.09.2010, the plaintiff had taken the possession of the aforesaid property from the defendant on rent at the rate of ₹7,000/- per month and started carrying his business under the name and style of "Bindal Studio" and the Assessing Authority, Hisar had issued a TIN No.06391538263 and employed 20 employees. At the time of giving the aforesaid basement on rent, ground floor and first floor were lying vacant and second floor was in possession of the defendant, which was vacated by the him and the aforesaid premises were given on rent to the petitioner in the month of April, 2014 and the rent of the whole building changed from ₹7,000/- to ₹ 22,000/- per month. Apprehending the threat from the respondent, the aforesaid suit was filed. The trial Court, on 25.6.2015, after issuing notice to the respondent-defendant (Annexure P-2), passed the following order:-

"1. Case file put up before me being Vacation Judge. Power of Attorney filed on behalf of defendant.

2. At this stage, the learned counsel for the

defendant has made a statement to the effect that defendant will not dispossess the plaintiff from the basement and first floor of case property except in due course of law. As such, the defendant is restrained from dispossessing the plaintiff from the case property except in due course of law.

3. *Heard on the application for appointment of Local Commissioner moved by plaintiff through his counsel. Learned counsel for defendant has given his no objection on the margin of the application itself. Keeping in view the contents of the application as well as no objection endorsed on the margin of application itself, the same is allowed and Sh. Brijesh Boora, Advocate is appointed as Local Commissioner. His fee is assessed at ₹3,000/- which shall be borne by the plaintiff. The Local Commissioner is directed to visit the spot and report about the status of the case property. The L.C is also directed to give notices to both the parties before visiting the spot. Report of Local Commissioner is awaited for 07.07.2015. Written statement and reply to stay application be also filed on the date fixed.*

File be sent to the Court of learned Civil Judge (Sr. Divn.), Hisar.

(Ashish Kumar Sharma)
Civil Judge (Jr. Divn.), cum
Vacation Judge, Hisar.

25.06.2015.”

Vide same order, the Court also appointed a Local Commissioner, who, inspected the premises, on 26.6.2015, and submitted his report vide Annexure P-3. As per the report, the Local Commissioner found a big signboard in the name of 'Bindal Studio at the entrance of the building and at the basement of the building, there was a Photo Lab/Studio work and many computers, which were being used by several employees. In the ground floor, on its entrance, there was a big counter having the signboard of “Bindal Studio” and the plaintiff, namely, Salim Khan was sitting on the counter along with 2/3 employees. On the first floor, the framing work was being done by the employees of the plaintiff and several frames length were lying there. At the entrance of second floor, one name plate was fixed having name 'Salim Khan son of Rajbir Khan Bindal Studio Tilak Bazaar, Hisar'. It also consisted of a kitchen, lobby and two bed rooms and all the household articles/goods were lying there and two big photo frames of Salim Khan were also hanging on the Walls.

It has been submitted that by the voracious act of the defendant, on 31.08.2015, the petitioner-plaintiff was forcibly dispossessed by the defendant with the help of 15 unscrupulous persons and in this context, stated to have moved application

(Annexure P-4) under Section 151 CPC, for implementation of the stay order dated 25.06.2015, with a further direction to the police of P.S.City Hisar to get the stay order implemented at the spot. Similar complaint (Annexure P-5) was also made to the police.

On the basis of the aforesaid application, Local Commissioner was appointed and he gave his report of even date that is 02.09.2015. It would be apt to reproduce the report of Local Commissioner, Annexure P-6, which reads thus:-

“Salim Khan vs. Krishan Kumar

Local Commissioner Report

Respected Sir,

The under signed was appointed Local Commissioner in the above stated case vide order dated 31.08.2015 for determining the actual position of the disputed property. The under signed being Local Commissioner visited the disputed property on 01.09.2015 at 1.00 P.M after issuing notices to the learned counsels of both parties.

From the plaintiff's side, the plaintiff Salim Khan himself was present and from the defendant's side, Sh. Anuj Gupta, Advocate, was present at the time of inspection who signed the attendance sheet. Both the parties identified the disputed property. Thereafter, the Photographer Sunil son of TeK Ram resident of village Chanot District Hisar was called and he took the

photographs in presence of plaintiff and Sh. Anuj Gupta, Advocate. Before departing, the plaintiff provided his case brief and under signed read the plaint etc.

Firstly, the photograph of the outer side of the disputed property was taken and the signboard of the disputed property was found in broken condition and second photograph of outer side was taken and a logo of Bindal Studio was seen on the window glass. Thereafter, the photographs of the main counter was taken and on the main counter two persons who told their names as Pawan Kumar son of Om Parkash resident of Sirsa and Ashok Kumar son of Mukan Lal resident of Nohar Rajasthan were sitting who also signed the attendance sheet and who told the under signed that now they are the incharge of the disputed property and they are the relative of the Krishan Kumar. It is submitted that no work of photography etc. was in the progress at the time of inspection and there were no camera etc. were seen on the spot. The disputed site consists of basement, ground floor, first floor and second floor.

Thereafter, the under signed along with the plaintiff and Sh. Anuj Gupta, Advocate, Photographer, Pawan Kumar and Ashok Kumar visited the disputed site and in black portion of the main counter, there exists a small counter and by the side of small counter, there

exists a hall wherein sofas were lying and about 5/6 person were sitting. Then the basement was visited and photographs were taken and a small counter also exists there and photographs of the same were taken. Thereafter, first floor was visited and on the first floor, domestic gas cylinders, household articles, iron box, utensils and unwashed utensils, mattresses and there were about 10/12 of lot of clothes of etc. were lying in mismangled condition.

Then the second floor was visited and in the first room two single beds in different directions were lying and a desert cooler was installed in the window. In this room, a lady chappal was lying near the single bed. No household articles were found in the second floor. In the next room, a girl about 14/15 years and women were sitting. Ashok introduce these girl and women as daughter and wife of his servant Satyawar who served the water and tea to the under signed and Sh. Anuj Gupta, Advocate, and other persons. Then, the photographs of kitchen which is situated by the side of second room were taken.

Photographs of the disputed site which are in numbers total 20 which bears the stamp and signatures of the under signed on the back, attendance sheet, notices to learned counsels and robkar are attached

herewith the report for the kind perusal of learned Court.

Date: 02.09.2015

Rajbir Singh Dabra

Advocate-cum-Local

Commissioner

Hisar P/1371/2008”

As a result of the report of the Local Commissioner, the application under Section 144 of CPC was filed. The aforesaid applications were contested by the defendant, wherein, it was stated that the allegations levelled against him and local police, were false, baseless, concocted and false story has been coined in order to avoid the ejectment on the ground of subletting as the plaintiff had already sublet the suit property to some Pawan Kumar and others. It has been further stated in reply, that defendant, after filing of the suit, never stepped into demised premises nor he gave any threat to the plaintiff of forcible dispossession.

Mr. Ajay Jain, learned counsel appearing on behalf of the petitioner-plaintiff submits that after the receipt of the report dated 2.09.2015 of the Local Commissioner, an application dated 4.09.2015 under Order 1 Rule 10 CPC was filed at the behest of Pawan Kumar son of Om Parkash and Ashok Kumar son of Mukan Lal, for being impleaded, as defendants No.2 and 3 on the premise that since the petitioner-plaintiff had obtained a sum of ₹4,44,000/- as loan from the applicants on various dates between 17th August to 30th November, 2013 and when the applicants insisted for their repayment, then on 15.08.2015, the plaintiff assigned the tenancy rights in the demised premises

to the applicants and handed over the actual possession of the demised premises after taking a sum of ₹4,02,500/- vide receipt on account of instruments and other articles, lying in the demised premises. He further submits that the said application is stated to be pending on 3.09.2014, a day before defendant-Krishan Kumar suffered a statement before the Court and stated that he has never interfered into peaceful possession of the plaintiff.

He further submits that the aforesaid applicants also filed a civil suit, dated 07.09.2015 for permanent (prohibitory) injunction against the plaintiff and Krishan Kumar seeking restraint order with regard to dispossession from the property in dispute and Krishan Kumar-defendant in the present suit had put in appearance and taken three dates, but yet did not file written statement. It has been submitted that the story coined in the suit belies the situation of the applicants and defendant for the reason that the petitioner-plaintiff had made the payment of electricity charges to the tune of ₹ 37260/- vide cheque No.97354, in favour of DHBVN on 24.08.2015, therefore, it cannot be hardly believed that the petitioner-plaintiff, on 15.08.2015, assigned the tenancy rights of the demised premises, in favour of the aforesaid persons, who sought to be impleaded. He further submits that the trial Court has committed illegality and perversity in declining the application on the premise that as interim application is yet to be finally decided, thus, no police help can be provided. In support of his aforesaid contention, he relied upon the judgment of the Hon'ble Supreme Court in ***Meera Chauhan vs.***

Harsh Bisnoi and another 2007(1) R.C.R.(Civil) 597.

Mr. Anurag Jain, learned counsel appearing on behalf of the defendant submits, that from the contents of the application, which has been rejected vide impugned order, it is revealed that the plaintiff had never been dispossessed. Rather, from the pith and substance in the application, the petitioner was/is being compelled by the defendant and by the local police, to compromise the matter and to hand over the vacant possession of the building in question to the owner. Defendant never disobeyed the order of the Court, therefore, assistance of the police sought was not required. He further submits that there is no illegality and perversity in the impugned order and the same cannot be said to have been passed without jurisdiction.

Mr. Chetan Mittal, learned Senior Advocate assisted by Mr. Mohinder S. Nain, Advocate appearing on behalf of the aforementioned persons, namely, Pawan Kumar and Ashok Kumar submitted, that the petitioner-plaintiff is a photographer and had there been an instance of forcible dispossession, he would have taken the photographs or made video of the incident, in order to fortify the stand as from the contents of the applications, it is borne out that the alleged dispossession has taken place during the day time in busy market. Even the injunction order pertains to basement and first floor and not with regard to ground floor and second floor. The contents of the application, under Section 144 of the CPC, shows that only the damage to goods had been caused and few articles, like jewellery

and other things have been stolen. He further submits that since the petitioner-plaintiff owed a sum of ₹10 lacs to the aforesaid persons, he is willing to hand over the vacant possession to the plaintiff, in case, the aforesaid amount along with other amount is paid by the plaintiff and further his claim would not averse, in case, any direction is issued to the trial Court to hold the trial on day-to-day basis. The plaintiff cannot be permitted to seek implementation of the interim order, as it yet to be decided or whether ingredients of Order 39 Rules 1 and 2 CPC are made out or not.

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

On noticing the aforementioned contentions, facts and report of the Local Commissioner, it is borne out that the possession of the property in dispute is with Pawan Kumar son of Om Parkash and Ashok Kumar son of Mukan Lal.

The Hon'ble Supreme Court in Meera Chauhan's case (supra) in paragraphs No.17 and 18 of the judgment has held that whenever, the parties violate the order of injunction or stay order or act in violation of the said order, the Court can, by exercising its inherent powers, put back the parties in the same position, as they stood prior to issuance of the injunction order or give appropriate direction to the police authority to render aid to the aggrieved parties for the due and proper implementation of the orders passed in the suit and also order police protection for implementation of such order. The Court can also order restoration of possession to the party

wronged. It would be apt to reproduce paragraphs 17 and 18 of the aforesaid judgment, which reads thus:-

“17. At the same time, it is also well settled that when parties violate order of injunction or stay order or act in violation of the said order the Court can, by exercising its inherent power, put back the parties in the same position as they stood prior to issuance of the injunction order or give appropriate direction to the police authority to render aid to the aggrieved parties for the due and proper implementation of the orders passed in the suit and also order police protection for implementation of such order.

18. It is also well settled that when in the event of utter violation of the injunction order, the party forcibly dispossesses the other, the Court can order restoration of possession to the party wronged.”

It is a matter of record that so far, no objections have been filed to the report of the Local Commissioner dated 02.09.2015. It is a case of annihilation. The Court, while deciding the application filed under Section 151 of the CPC, was totally oblivious that the orders of the Court, i.e., ad interim, interim or final orders, are to be respected and regarded. On juxtaposition of the reports of the Local Commissioner dated 26.06.2015 and 2.09.2015, it leaves no manner of doubt, that the plaintiff, who was found in possession of the entire building, has been forcibly dispossessed, thus, there is willful

disobedience of the order dated 25.6.2015. In such a situation, Court should come to the rescue of the party complaints of by analyzing events having taken place post interim order. The petitioner even had a grievance against the P.S.City, Hisar as the local police of that station, was also siding with the aforementioned persons, much less, with the defendant-Krishan Kumar as the police also did not take any action for respecting the order of the Court.

In my view, the trial Court ought to have exercised the jurisdiction under Section 151 CPC by issuing appropriate orders and not in the manner and mode, by dismissing the application by holding that interim application is yet to be finally adjudicated. In my view, no useful purpose would be served in pondering upon interim application any longer. The Courts below should be wary in taking action, whenever parties to the lis, brings to its notice about the willful disobedience of the interim order. It is a fit case, where the Court ought to have come to the aid of the plaintiff-petitioner by directing the concerned police station or any police station to implement its interim order and thereafter, case should have been fixed for final adjudication of the interim application. In case, the course in which the impugned order, has been passed, is adopted, the people will stop reposing faith in judiciary and may take the law in their own hands in resolving the disputes by adopting rebellious attitude. Duty of the police are to maintain law and order and protect the residents of the area of their safety and sound sleep, but it is a case of highest degree of aberration, much less, repugnancy. The plea of the

respondent and Mr. Mittal, learned Senior Advocate, that the contents of the application do not reflect, that the petitioner-plaintiff has been dispossessed, is false on the face, particularly, on account of the fact that when the offer was made on behalf of Pawan Kumar and Ashok Kumar, have returned back the possession to the plaintiff, in case, the payment is received. Such an action on the part of the aforementioned persons shows that they have adopted the cut short method in recovering the alleged amount by not resorting to the remedy available in law. Such type of extreme hostility cannot be ignored, much less, lost sight of the fact, particularly when brought to the notice of the Court. The provisions of Section 151 CPC can be brought into action against the persons who are even not party to the suit. Otherwise, defendant, against whom the action sought to be taken, would resort unethical method as apparently been done, in the instant case.

On cumulative reading of the facts and reasoning, in my opinion, it is a fit case of utter violation of injunction order as the petitioner/plaintiff has been forcibly dispossessed.

In view of what has been observed above, the impugned order is set aside and I hereby order restoration of the possession to the petitioner forthwith, and the Court shall provide assistance of local police to the petitioner-plaintiff in seeking restoration of the possession. Superintendent of Police of the concerned District is also directed to provide police help to restore the possession of the aforesaid building and ensure that directions aforementioned of this

Court are complied in letter and spirit. Copy of the order be also sent to Superintendent of Police, Hisar.

Accordingly, revision petition stands allowed.

Liberty is granted to the petitioner-plaintiff to move an appropriate application in accordance with law, in case the aforementioned directions are not implemented.

(AMIT RAWAL)
JUDGE

September 21, 2015
savita