

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

CR No.7301 of 2015.

Date of Decision: 17.11.2015.

Gurjinder Singh Khangura

....Petitioner.

VERSUS

Mrs. Ravinder Brar and another

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. G.S. Nagra, Advocate for the petitioner.

SNEH PRASHAR, J.

By way of this civil revision filed under Article 227 of Constitution of India, the petitioner-defendant No.2 prayed for setting aside the order dated 09.09.2015 passed by learned Additional Civil Judge (Senior Division), Chandigarh, whereby the application under Order 38 Rules 1 and 5 read with Section 151 of the Code of Civil Procedure (for short, "the Code") filed by the plaintiff/respondent No.1 was allowed with the direction to the defendants to furnish sufficient surety with regard to the suit amount i.e. Rs.22,26,628/-.

The submissions made by Mr. G.S. Nagra, learned counsel representing the petitioner have been considered.

The facts pleaded indicate that a suit under Order XXXVII of the Code for recovery of Rs.22,26,628/- was filed by respondent No.1 against the petitioner-defendants. On receipt of summons, defendants appeared before the trial Court and vide order dated 18.05.2015, the suit was converted into a regular civil suit. Accordingly, the petitioner-defendants filed written statement and also filed counter claim claiming an amount of Rs.39,15,764/- on account of reimbursement of entire rent paid, interest, damages, compensation for physical and mental harassment and cost of litigation. Plaintiff-respondent No.1 filed an application under Order 38 Rule 1 and 5 read with Section 151 of the Code for direction to the petitioner to furnish security to the tune of Rs.25 lacs. A similar application had been filed by petitioner-defendants with their counter claim. Learned trial Court allowed the application of respondent No.1 and dismissed the application of the petitioner vide order dated 09.09.2015. There was a lease deed dated 01.08.2009 of first floor of House No.163, Sector 9-B, Chandigarh between the petitioner and respondent but conditions of lease agreement were not complied with. Even First Information Report No.20 dated 02.02.2012 under Sections 427 and 341 of Indian Penal Code was registered against the petitioner on a complaint made by Col. H.S. Brar which was found false and said First Information Report was cancelled by the police.

The grievance of the petitioner is that the condition imposed was illegal and arbitrary. Learned counsel for the petitioner submitted that the petitioner had good defence on merits and had also filed a counter claim

and therefore, direction to him to furnish surety to the extent of suit amount is illegal.

The counter claim filed by the petitioner, as is evident from the impugned order of learned trial Court is based mainly on his allegation that they were not allowed to use the property as per their convenience and their peaceful possession during their stay in the house was continuously interfered. The amount being claimed is as damages for mental and physical harassment and damages etc. Learned trial Court rightly held that prima facie the basis of counter claim is not so strong as to draw presumption that it can be proved even by preponderance of probabilities.

On the other hand, the findings of learned trial Court allowing the application of respondent No.1 and directing the petitioner to furnish security to the extent of suit amount are as under:-

“After careful perusal of the record and the discussion of proceedings so far, what is apparent is that on behalf of defendants, there has been an attempt to derail the suit maneuvering on the technicalities of services of process. Reports received on the ordinary processes and postal covers necessitated services under Order 5 Rule 20 CPC, and the GPA who appeared on the basis of publication, seems to be quite in touch with the defendant and trying to distract the Court to believe that he is no more in contact with the defendants. Same counsel kept on appearing for the defendants through GPA and then defendant. The defendant was very well

aware of the institution of suit and dates of hearing, but seems to have been taking shelter of technicalities of rules of procedural with regard to services and representation in Court through attorney. Although, it is not proper to discuss the merits of claim of defendants in counter claim, but prima facie audacity in conduct of defendants/ tenants is apparent that after enjoying the property, allegations are made against the landlord for not allowing to use the property according to convenience of defendants. At this stage, it is admitted that the defendant is an NRI and has no permanent abode in India. After hearing of arguments, when the matter was posted for orders today, an application was moved on behalf of defendants seeking permission to place on record certain documents which shows that his firm M/s Khangura Import Export Private Limited is doing business at its new address at Mohali. Perusal of these document show that the defendant firm is operational from new address at Mohali, Punjab. However, there is nothing on record to show that any of its Director have a permanent place in India or there is any property held by the defendants sufficient to satisfy a possible money decree. Thus, certainly, apprehensions of plaintiff are well founded.”

The conduct of the petitioner-defendants apparent from the facts noticed by learned trial Court in para No.4 of the impugned order well

explains the above findings. The petitioner had been trying his best to delay the proceedings and side track the issue from the very initial stage.

Learned counsel for the petitioner could not demonstrate any error or law in the impugned order passed by learned trial Court. Finding no illegality or perversity in the impugned order passed by learned trial Court warranting intervention, this petition is dismissed.

(SNEH PRASHAR)
JUDGE

17.11.2015.
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