

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.8810 of 2014(O&M)

Date of decision: 12.1.2015

M/s Eigen Technical Services Pvt. Ltd.

...Petitioner

Versus

M/s Vatika Ltd. and another

...Respondents

CORAM: MR.JUSTICE G.S.SANDHAWALIA

Present: Mr. Amit Jain, Advocate for the petitioner.

G.S.SANDHAWALIA, J, (Oral)

Civil Misc. No.408-CII of 2015

Prayer made in this Civil Misc. Application for placing on record copies of order dated 7.8.2014 passed by the ACJ (SD), Grugaon and order dated 5.7.2013 passed by this Court and order dated 30.4.2014 passed by the Apex Court as Annexures P/6 to P/8 respectively is allowed.

Annexures P/6 to P/8 are taken on record.

Office to tag the same at appropriate place in the file.

The Civil Misc. Application stands disposed of accordingly.

CR No.8810 of 2014

1. The present revision petition is directed against the order dated 18.12.2014 (Annexure P/5) whereby an attempt has been made by the petitioner-plaintiff who is defendant in another connected suit to stall the proceedings which are at the final stage.

2. Vide impugned order the trial Court had dismissed the application for consolidation of the case with the prayer for staying the proceedings in the first suit filed by the respondents. It is pertinent to mention that suit for possession was filed against the present petitioner for ejectment and for recovery of ₹ 1,08,04,564/- as arrears of rent and mesne profits. Initially the suit was resisted by taking the plea and hiding behind

the clause of arbitration. The trial Court dismissed the said application filed under Section 8 of the Arbitration and Conciliation Act, 1996 on 4.5.2013. The said order was upheld by this Court in Court in Civil Revision No.3918 of 2013 on 5.7.2013 (Annexure P/7) and costs of ₹ 25,000/- were imposed. The matter was taken to the Apex Court which only interfered to the extent of costs of ₹ 25,000/- imposed by this Court which were set aside on 30.4.2014.

3. Thereafter, it is apparent that the petitioner filed second suit in November, 2014 for rendition of accounts against the plaintiff of the first suit namely M/s Vatika Limited. The plea taken was that some amount had been spent on the interiors which were in existence in the premises and accordingly the suit should be clubbed. Thereafter, separate application was filed for consolidation of the cases and for the stay of the first suit.

4. The application was resisted by filing the reply pointing out that the defence had been struck off in the suit for possession for non compliance of order dated 29.7.2013 for failing to pay the rent. Vide subsequent order dated 7.8.2014 (Annexure P/6), the rent having not been paid, the defence had been struck off and the said order had attained finality and therefore, first suit being for final arguments, the application was false, frivolous, vexatious and time barred. The petitioner was remaining in unauthorised and illegal possession without paying a single penny out of the huge arrears. The said application has been dismissed by noticing that the matter had been taken to the Apex Court and the rent has not been paid and the defence has been struck off on failure to pay the rent and if suits were consolidated, it would amount to circumventing the order passed in the first suit.

5. The reasoning adopted by the trial Court is perfectly justified and needs to be approved. It is apparent that circuitous move has been

adopted by the petitioner to circumvent and delay the proceedings of the first suit. The rent has not been paid and the arrears of huge amount over a crore is due. On account of the defence being struck off, eviction is staring the petitioner in his face and vide the said application stay of proceeding is prayed for, so that the suit for possession filed by the respondent can be controlled by getting it clubbed.

6. The judgment of the Delhi High Court in **S.C.Jain Vs. Bindeshwari Devi 1997(67) DLT 189** and the judgments of the Apex Court in **Mahalaxmi Cooperative Housing Society Limited and others Vs. Ashabhai Atma Ram Patel (dead) through L.Rs. And another (2013) 4 Supreme Court Cases 404** and **Ram Parkash Aggarwal and another Vs. Gopi Krishan (dead through L.Rs) and others (2013) 11 Supreme Court Cases 296** which have now been cited by the counsel for the petitioner laid down the principle of consolidation. Counsel could not however point out any precedent wherein similar facts were involved which have to be taken into consideration by this Court before the application is to be allowed under Section 151 CPC for consolidation.

7. Accordingly, the impugned order which has been passed by the trial Court is perfectly justified. In normal circumstances, this Court would have imposed the costs upon the petitioner but since the other side has not been called upon, this Court is refraining itself from imposing costs.

6. With the aforesaid observations, the present revision petition is dismissed.

January 12, 2015
Pka

(G.S.SANDHAWALIA)
Judge