

COCP No.1759 of 2014 (O&M)

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

**COCP No.1759 of 2014 (O&M)
Date of decision:07.12.2016**

Maharaj Bakhsh Singh and another ...Petitioners

Versus

Capt. M.S.Kahlon ...Respondent

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. H.S.Gill, Senior Advocate, with
Mr. Nitin Ram Pal, Advocate, for the petitioners.

Mr. Rajeev Lochan, Advocate,
for the respondent.

Rakesh Kumar Jain, J.

This petition is filed for the alleged willful disobedience by the respondent of the order dated 16.09.2013 passed in Civil Revision No.3077 of 2011.

In short, it is averred in the petition that the petitioners were initially allotted industrial plot No.406 on leasehold basis on 25.09.1992 but later on industrial plot No.606, Industrial Extension, Phase-IX, Mohali, was allotted to them in lieu of plot No.406 on the same terms and conditions for the purpose of industrial activities. The respondent is occupying the said property of the petitioners. The petitioners filed a suit for permanent injunction along with an application for temporary injunction, seeking to restrain the respondent from using the property in question for the purpose

of running any Maritime Education and Training Institute and for further use of any portion of the said building for residential purposes. The trial Court dismissed the application on 13.05.2010 and the First Appellate Court upheld the said judgment of the trial Court on 04.12.2010 and, thus, both the orders were challenged by the petitioners in Civil Revision No.3077 of 2011, which has been allowed by this Court on 16.09.2013 and both the orders of the Courts below were set aside on the ground that they suffered from error of law and perversity. The relief granted to the petitioner by the revisional court is as under:-

“Since 2007 the respondent has been using the premises for the purpose for which the lease was granted to him, equity and justice demands that reasonable period to rehabilitate be granted to the respondent, accordingly he is granted nine months' time to use the premises. In the meantime, he will make alternate arrangement for shifting his entire establishment from the present premises to any other place on expiry of aforesaid period of nine months. Thereafter this order will operate and the respondent/defendant is restrained from using the premises for the purpose mentioned in the lease deed dated 25.6.2007.”

The cause of action arose to the petitioners to file the present petition because according to them, the period of nine months had expired from 16.09.2013 to 16.06.2014 but the respondent did not stop the violation as he neither shifted the entire establishment nor stopped the residential use of the demised premises. It is further averred that the respondent did not even pay the rent due.

On 11.08.2015, a detailed order was passed by this Court, which reads as under:-

“A curative affidavit in support of the reply has been filed

wherein respondent owns up the assertions made therein. Same is taken on record and is permitted to be read as a part of reply itself. An application bearing CM No.16116-CII-2015 has been filed by the petitioners bringing to the notice of the Court that there is a civil Court decree dated 26.03.2015 passed in Civil Suit No. RT-21 of 5.10.2009/27.01.2014, titled Mandeep Singh through LRs and another v. Capt. M.S.Kahlon, and a permission is sought to place the same on record.

CM is allowed and the judgment and decree are taken on record.

The relevant part of the judgment is given as under:-

“In view of my findings made on the above said issues, the suit of the plaintiff succeeds and the same stands decreed with costs, and consequently the defendant is restrained from running the business of Marine Education and Training Institute in the suit property or from using the premises/building for the residential purpose either by defendant himself or by his staff or students or using the premises for any other purpose except for the purpose mentioned in the allotment letter. Decree sheet be prepared. File be consigned to record room.”

This would indicate that the respondent has been restrained from using the premises for residential purposes as well, as also, for the purpose for which he had been using the premises contrary to the terms of the lease.

The respondent would assert that the decree permits him a user for the intended purpose stipulated in the lease executed by the PSIEC in favour of the petitioner. The Court has been apprised that the purpose for which the lease was granted to the petitioner was industrial and for carrying out manufacturing of fire extinguisher etc. Respondent states that he is now in the process of setting up a venture and for that he has prepared a project report.

I am afraid that such a plea can never be accepted. As on today, the petitioner's right on the property in question has been determined in terms of the judgment and decree. Besides, the respondent has not paid even a single penny to the petitioners since 01.09.2013 and has not vacated the premises even though the revision petition preferred by him was dismissed granting him time

to vacate the premises upto 16.06.2014. Relevant portion of the order dated 16.09.2013 passed in said revision is reproduced as under:

“ In the present case, petitioners have prima facie case that their right to hold the property is threatened as in case the respondent/defendant continues in possession in violation of the original lease deed between the petitioners and the PSIEC, the property will be resumed by PSIEC. The balance of convenience is also in favour of the petitioners that their rights in property would be extinguished, which cannot be compensated and will result into irreparable loss. Therefore, keeping in view the fact that respondent/defendant is using the property in violation of the terms and conditions between the petitioners and the PSIEC as well as the bye-laws, I find that impugned orders are perverse; as such not sustainable in the eyes of law.

In view of the above discussion, the present revision petition is allowed. Impugned orders are set aside as they suffer from error of law and as such are perverse.

Relief

Since 2007 the respondent has been using the premises for the purpose for which the lease was granted to him, equity and justice demands that reasonable period to rehabilitate be granted to the respondent, accordingly he is granted nine months' time to use the premises. In the meantime, he will make alternate arrangement for shifting his entire establishment from the present premises to any other place on expiry of aforesaid period of nine months. Thereafter this order will operate and the respondent/defendant is restrained from using the premises for the purpose mentioned in the lease deed dated 25.06.2007.”

The rent component is the bedrock of relationship between a landlord and a tenant. Having concededly defied this, the respondent would have no right to remain in possession of the property particularly after the passing of the decree. He is, thus, required to pay rent @ ₹33,862/- per month w.e.f 01.09.2013 at the rate mentioned in the lease. He would, also, be required to pay

mesne profit w.e.f 16.06.2014 after his rights were extinguished in the Revision Petition No. 3077 of 2011 decided on 16.09.2013.

The respondent also concedes that he has stopped the user of the premises both for residential and for the purpose he was using before the passing of the decree. This he has done since June 2014 but despite this he has not vacated the premises.

This would further imply that the respondent is a tenacious tenant who is clinging on to the premises without payment of rent in order to defeat the rights of the landlord.

The very fact that he has stopped the user of the premises both for residential and for the purpose he was using before the passing of the decree since June 2014 without payment simply reflects his mind set. In any eventuality since the respondent is concededly in possession of the premises even after passing of the decree, he would be bound to pay mesne profit for which the petitioners would be at liberty to furnish material to the Court for proper assessment thereof. For the present as an interim measure, the mesne profit is determined at `1,00,000/- per month w.e.f 16th June 2014 subject to the rights of the parties. In case the Court concludes that the mesne profit should be on lesser side than this amount, obviously such a deposit by the respondent shall be subject to adjustment. The entire amount at the rate of ₹1,00,000/- per month from 16th June 2014 shall be paid by the respondent positively within a period of three weeks from today. From 01.09.2013 to 15th June 2014, the petitioner shall pay @ ₹33862/- per month as per lease of the lease amount.

Adjourned to 28.09.2015 for further proceedings.”

The crux of the aforesaid order was a direction to the respondent to pay the mesne profits @ ₹1,00,000/- per month w.e.f. 16.06.2014, subject to rights of the parties and the respondent was directed to deposit the entire amount calculated from 16.06.2014 within three weeks from the date of the order i.e. 11.08.2015 and was ordered to pay the lease money @ ₹33,862/- per month w.e.f. 01.09.2013 to 15.06.2014. In the subsequent order dated 26.02.2016, the Court had noticed the following:-

“It is not disputed by the respondent that he has not paid the amount as determined by this Court in its order dated 11.8.2015. The respondent has merely paid rent at the rate of Rs.33,862/- upto October, 2015. No amount has been paid thereafter. Even if the best case of the respondent is to be accepted he would still be required to pay the amount for the subsequent period as well as he is continuing to hold the premises but in order dated 11.8.2015 the mesne profits were assessed at the rate of Rs.1 lac per month subject of course to the rights of the parties. Therefore, there would be no occasion for the respondent to keep the execution of the orders in abeyance. He was certainly within his rights to challenge that order which he has concededly done but till date there has been no order by the LPA Bench either varying the terms of this order or staying it. In this eventuality, respondent cannot escape the consequences of the order dated 11.8.2015. Even if all his pleas are accepted he will still be required to pay rent at the rate of Rs.33,852/- which is existing after the initial deposit upto October, 2015. Evidently, the respondent is holding on to the premises without making any payment of the rent and is in clear contempt of the orders of this Court.

Before proceeding to pronounce him guilty, the Court would still offer him one more opportunity to deposit the entire amount within the period of 10 days from today, failing which respondent shall remain present in Court on the next date of hearing. This order would be treated as a show cause notice to the respondent as to why he should not be punished for contempt.

List again on 16.3.2016.”

In the aforesaid order, a clear observation has been made that
“evidently, the respondent is holding on to the premises without making any payment of the rent and is in clear contempt of the orders of this Court”.

According to the respondent, the order dated 16.09.2013 passed in Civil Revision No.3077 of 2011 has been challenged by him in LPA No.1431 of 2015 but he has admitted that there is no stay in it.

The calculation chart prepared by the petitioners was handed

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over to the Court as per which, the respondent is still liable to pay ₹21,53,582/-. The said calculation is reproduced here-under for the ready reference:-

Calculation of the amount as under:-	
For the period from 1.9.2013 to 16.6.2014- 9-½ months @ ₹33,862/- P.M.	₹3,21,689/-
As per the orders of this Hon'ble Court passed on 11.8.2015 in COCP No.1759 of 2014, the damages granted w.e.f. 16.6.2014 to 31.8.2016 @ ₹1,00,000/- per month period 26-½ months	₹26,50,000/-
Total	₹29,71,689/-
Less the amount paid by way of demand draft before the LPA Bench in LPA No.1431 of 2015 on 29.9.2015 for the period from 1.9.2013 to 30.9.2015 @ ₹33,682/- per month for 25 months	₹8,46,550/-
Balance Amount	₹21,25,139/-
Less paid by way of cheque in court on 28.7.2016 in favour of Sardarni Patinder Kaur	₹20,23,559/-
Plus property tax paid by petitioners	₹1,30,023/-
Balance Amount due plus interest	₹21,53,582/-

Learned senior counsel appearing on behalf of the petitioners has submitted that the respondent, in any case, is in contempt of the order dated 11.08.2015, in which specific directions were issued to him to pay the aforesaid amount within the specified time but since the respondent has not paid the said amount, therefore, he should at least be proceeded against under the provisions of the Contempt of Courts Act, 1971 for deliberate and willful disobedience, as observed by this Court in the order dated 26.02.2016.

On the other hand, the respondent had filed an application asking the petitioners to provide their PAN numbers, which is challenged by the petitioners on the ground that it is only a trick played by the respondent to delay obedience of the order dated 11.08.2015.

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I have heard learned counsel for the parties and examined the available record from which I am of the considered opinion that the respondent, in any case, has to obey the order dated 11.08.2015 in its letter and spirit as so long it is in operation and he cannot be allowed to drag the case on one pretext or the other.

Accordingly, the respondent is held guilty of committing contempt at least of the order dated 11.08.2015 but the order of punishment is hereby deferred for three months, by giving the respondent one last opportunity to purge the contempt by depositing the amount in terms of the order dated 11.08.2015 with the Registry of this Court by way of a demand draft drawn in favour of the Registrar, Punjab and Haryana High Court at Chandigarh and in case it is not done by the respondent within three months from today, the Registry is directed to list this case after three months for the purpose of further directions, may be required for the punishment to be awarded to the respondent.

With these observations, the present petition is hereby disposed of.

December 07, 2016
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No