

COCP No.977 of 2016 (O&M)

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

COCP No.977 of 2016 (O&M)

Date of decision:28.09.2016

Som Parkash Rishi

...Petitioner

Versus

Shri Satish Kumar and others

...Respondents

CORAM: Hon'ble Mr. Rakesh Kumar Jain

Present: Mr. Arun Jain, Senior Advocate, with
Mr. Arnav Sood, Advocate, for the petitioner.

Mr. Birender Singh Rana, Senior Advocate, with
Mr. Rajinder Paul & Ms. Simranjeet Kaur, Advocates,
for respondent No.1.

Rakesh Kumar Jain, J.

The petitioner filed an application under Section 13 of the East Punjab Urban Rent Restriction Act, 1949, as applicable to the Union Territory of Chandigarh, against the respondents for seeking their eviction from the demised premises comprises of one big hall, one kitchen, latrine and bathroom constructed on the first floor of Godown/SCF No.154, Grain Market, Sector 26, Chandigarh. The eviction petition was dismissed by the Rent Controller on 20.01.2004. However, appeal filed by the petitioner was allowed by the Appellate Authority, Chandigarh on 20.09.2006 and the respondents were ordered to be evicted from the demised premises. The respondents filed Civil Revision No.5872 of 2006, which was dismissed on 06.04.2015 and the Review Application bearing RA No.CR-97-CII of 2015 was also dismissed on 30.04.2015. The petition filed by the respondents

before the Apex Court bearing Special Leave to Appeal (C) No(s).14589-14590 of 2015 was dismissed on 15.05.2015 and time was granted to the respondents till 31.03.2016 to vacate the demised premises and to hand over peaceful possession to the petitioner, subject to the following conditions:-

- “(1) The petitioners file an undertaking on usual terms in this court within six weeks from today.
- (2) The petitioners pay the entire arrears of rent for use and occupation within six weeks.
- (3) The petitioners pay compensation for use and occupation of the premises @ Rs.7000/- p.m. w.e.f. 01.05.2015 onward till the date of actual vacation of the premises. Future deposits shall be made by the 10th of every succeeding calendar month.

Breach of any one of the above conditions shall render the decree executable forthwith against the petitioner.”

Pursuant to the aforesaid order dated 15.05.2015 passed by the Supreme Court, respondent No.1-Satish Kumar filed his affidavit/undertaking before the Supreme Court on 04.06.2015 to comply with the aforesaid conditions.

Thereafter, the respondents filed an application before the Executing Court for execution of the order dated 15.05.2015 passed by the Supreme Court, in which the following order was passed on 30.06.2016 by the Executing Court:-

“Reply on behalf of the decree holder to the application filed by the Judgment Debtor filed. Heard. Considering the rival assertions with regard to the fact if the demised property has been vacated by the JD or not. It will be appropriate to seek report from a bailiff attached to the court of Learned Civil Judge, (Sr. Div.), Chandigarh, whether the demised property stands vacated or warrant of possession required to be issued for delivery of possession to the DH.

Copy of order be forwarded to the office of Learned Civil Judge (Sr. Div.), Chandigarh with the request to direct Civil Nazir attached to the office of Learned Civil Judge, (Sr. Div.), Chandigarh, to depute a bailiff and seek a report in regard to the aforesaid and file the report positively before the court at 10:00 AM on 31.03.2016. Bailiff is directed to identify the demised property as per eviction order. Copy of eviction order wherein description of demised property is given, be attached with the copy of order.”

Pursuant thereto, the bailiff produced its report, which is as under:-

“Sir, it is submitted that as per the eviction orders of the Hon'ble Court, copy attached, I reached at the demised property, description of the same is one big hall on front side and one kitchen on the 1st Floor, Godown No.154, Grain Market, Sector-26, Chandigarh. On the spot, I met J.D. Satish Kumar. He had put a lock on the said portion. When he was asked to open the lock of the said portion, he opened the lock. In this portion, he showed me one big hall on the front side and one kitchen on the 1st floor, Godown No.154, Grain Market, Sector-26, Chandigarh. The same was found vacant. There is no article of the JD in the same. After showing this portion, JD has again put his lock on the same. Hence, the report is submitted.

Sd/- Bailiff/30.03.2016.”

On 31.03.2016, all the respondents made the following joint statement before the Executing Court:-

“Stated that in compliance of the judgment dated 20.09.2006 passed by Learned Appellate Authority, Chandigarh, upheld upto Hon'ble Supreme Court of India vide judgment dated 15.05.2015 and as per our undertaking, we are handing over the vacant possession of one big hall on the front side and one kitchen on the first floor of Godown No.154, Grain Market, Sector-26, Chandigarh to the decree holder Sh. Som Parkash Rishi today before the Hon'ble Court. In compliance of the above judgments, I have already paid the rent upto 31.03.2016 to the decree holder in

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respect of the above said premises. The receipts are already on record along with our application dated 14.03.2016.”

The petitioner also suffered the following statement before the Executing Court on 31.03.2016:-

“As the tenant is not handing over the keys of the stair case, therefore, the possession, he is handing over is incomplete and is in violation of undertaking furnished by me before the Hon'ble Supreme Court of India. As the possession is to be given peacefully as per the order of the Hon'ble Supreme Court of India and for this reason, I accept the possession under protest as he is not handing over the peaceful possession to the decree holder. Although this had never been the case of the tenant till date that he is in tenancy of some additional accommodation in addition to the demised premises but in order to falsely and illegally claimed possession of two rooms on the first floor which had been in possession of the decree holder since long. The tenant has also filed a civil suit seeking declaration of which I have received notice. For the said action of the tenants/JD, I reserve my right to file a contempt petition before the Hon'ble High Court/Hon'ble Supreme Court of India. The tenancy of the tenants/JD has come to an end.”

Thereafter, the Executing Court passed the following order on 31.03.2016:-

“Report of bailiff received. Copies supplied. On behalf of JD statement has been made that in compliance of judgment and orders of Hon'ble Supreme Court of India, they are handing over the vacant possession of one big hall on the front side and one kitchen on the first floor of Godown no.154, Grain Market, Sector 26, Chandigarh to the decree holder and that they have already paid the rent upto 31.03.2016 to the decree holder. On behalf of the decree holder, statement is made by power of attorney holder that tenant is not handing over the keys of the stair case and their possession is incomplete. The application in hand was moved by the tenant/judgment debtor for directing the decree holders to accept the vacant possession of one big hall on the front side and

one kitchen on the first floor of Godown no.154, Grain Market, Sector 26, Chandigarh. Since the possession of this portion has been received by the decree holder and he raises controversy with regard to stair case, accordingly, to come up on 11.05.2016 for arguments if the application should be considered staisfied.”

Now the petitioner has filed this petition invoking Section 10 and 12 of the Contempt of Courts Act, 1971 (hereinafter referred to as the “Act”), for initiating appropriate action against the respondents for violating the orders of the Supreme Court dated 15.05.2015 as they had not delivered “peaceful possession” and have rather filed a civil suit for declaration and permanent injunction, setting up their right of tenancy on the other two rooms and common bathroom and toilet on the same first floor, alleging that the petitioner had let out the said premises @ ₹250/- per month simultaneously when the big hall (on front side) and one kitchen were let out @ ₹224/- per month. This suit was filed on 28.03.2016, just 3 days prior to the date given to the respondents by the Supreme Court to vacate the demised premises from which they were evicted by the Court.

Counsel for the petitioner has submitted that while vacating the demised premises in question, the respondents have shifted their luggage in the other adjoining two rooms which were not let out to them and have now filed the civil suit for declaration and injunction in order to create hurdle in the delivery of “peaceful possession” as the respondents have even put a lock on the staircase, as shown in the photographs attached with the petition, which is the only access to the first floor. It is also submitted that if the petitioner had let out the said two rooms, for which the civil suit has been filed, with the common bathroom and toilet, simultaneously, when the

demised premises was let out, the respondents would have referred to it at some place in the pleadings of the earlier case or at least before any Court where the matter was pending till it reached up to the Apex Court after the eviction order was passed against them but the respondents have, in fact, used this device of filing the civil suit for declaration and permanent injunction to create unnecessary impediment in the delivery of “peaceful possession” of the demised premises. He has, thus, submitted that the act of the respondents is totally contumacious and there is willful defiance of the order of the Supreme Court where they had filed the undertaking as well to deliver “peaceful possession”. In support of his submissions, counsel for the petitioner has relied upon three judgments of this Court rendered in the cases of **Nachhattar Singh vs. Surinder Pal Singh and another**, 2011(4) R.C.R. (Civil) 464, **Devinder Singh vs. Sukhdev Thapar and another**, 2013(2) RCR (Rent) 711, **Krishan Kumar Verma vs. Amarjit Singh**, 2002(1) R.C.R. (Criminal) 582 and two judgments of the Supreme Court rendered in the cases of **Rama Narang vs. Ramesh Narang & Anr.**, 2006 (3) RCR (Civil) 313 and **D.M. Belgamvala vs. M/s. Tamil Nadu Real Estates (P) Ltd.**, 2011(1) R.C.R. (Civil) 297.

On the other hand, counsel for the respondents has submitted that there is no impediment/obstacle in the delivery of possession of the demised premises which has already been delivered to the petitioner in terms of the order of the Apex Court. It is further submitted that the staircase has been locked because the respondents are in occupation of the other two rooms on the first floor with common bathroom and toilet which were let out to them by the petitioner at the time when the demised premises

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was let out and the petitioner has also got the key of the said lock. It is further submitted that the respondents have not breached the undertaking given to the Supreme Court as the possession of the demised premises has already been delivered and they are pursuing their legal remedy by filing the civil suit in which they have sought declaration about their status in the other two rooms and the common bathroom and toilet existing on the first floor where the demised premises was also located, which cannot be termed to be contumacious in any manner. It is also submitted that even if, for the sake of arguments, it is presumed that the respondents have occupied the other two rooms by tress-passing, remedy lies with the petitioner to file a criminal case but no such case has been filed. It is further submitted that no contempt is made out under Section 2(b) of the Act and has relied upon a decision of the Calcutta High Court in the case of **Gopal Chandra Biswas vs. State of W.B. and others**, 1974 AIR (Calcutta) 3.

I have heard learned counsel for the parties and perused the available record with their able assistance.

There is no dispute that when the SLP filed by the respondents before the Supreme Court was dismissed, time was granted to them to vacate the demised premises upto 31.03.2016 and to hand over “peaceful possession”. It is also not in dispute that the respondents have delivered the possession of the demised premises to the petitioner. However, it is also not disputed that there is only one access by way of staircase for reaching up to the first floor where the demised premises is located, which is under the lock and key of the respondents. It is also not in dispute that on 28.03.2016, the respondents have filed the suit for declaration and permanent injunction

that they are the tenants in two rooms and common bathroom and toilet of Godown/SCF No.154, Grain Market, Sector-26, Chandigarh, under the present petitioner @ ₹250/- per month and prayed for a decree for permanent injunction to restrain the petitioner from interfering in their peaceful possession in the said premises.

Thus, in view of the aforesaid facts and circumstances, the question would be as to whether the respondents are deliberately not allowing the petitioner to enjoy the peaceful possession of the demised premises from which the respondents have been evicted and as to whether the act and conduct of the respondents makes themselves liable for initiation of proceedings under the provisions of the Act.

Counsel for the respondents may be correct in his argument that he has judicial remedy of filing a suit for declaration and permanent injunction in respect of the premises in his possession which is alleged to be invaded by the petitioner but whether the said judicial remedy, being pursued by the respondents, is an abuse of process of law and is an attempt to create hurdle in delivery of “peaceful possession” of the demised premises to the petitioner or not?

In the suit filed by the respondents, it is alleged that the petitioner had simultaneously let out two rooms with common bathroom and toilet, meaning thereby this premises was let out to them by the petitioner when the demised premises, from which they have been ordered to be evicted, was let out because the dictionary meaning of “simultaneously”, as provided in the Oxford English Dictionary, is “created, operated or done at the same time”. It would have been a normal human conduct to have

mentioned about this type of tenancy, by the respondents in the proceedings, in which they have been ordered to be evicted but still counsel for the petitioner has vehemently submitted that if the respondents produce even an iota of evidence of the creation of the said tenancy in these proceedings, his petition may be dismissed with heavy costs.

The Court repeatedly asked learned counsel for the respondents to produce any kind of evidence which may even remotely suggest that the tenancy was created by the petitioner of the two rooms with common bathroom and toilet simultaneously with the tenancy created of the demised premises but there was no answer, rather learned counsel for the respondents has submitted that the respondents would even forgo the tenancy of common bathroom and toilet.

It is really surprising that the respondents would occupy two rooms without kitchen, bathroom and toilet, which apparently means that the respondents are adamant to create hurdle in the “peaceful possession” of the property in question of the petitioner.

In **Nachhattar Singh's case (supra)**, this Court convicted the tenant for three months simple imprisonment and ordered to pay a fine of ₹2,000/- as it has been found that despite order of eviction, the tenant was filing one objection after the other to delay the execution. The relevant observations made therein are as under:-

“13. The respondents have a right to avail their legal remedies i.e. right of appeal. But they have no right to abuse the process of law by filing objections one after another with the object to delay the implementation and compliance of court’s orders. Though the earlier objections filed by the respondents have been dismissed, but the respondents choose to file another set of objections merely

because one Mal Singh has filed a suit for injunction. As mentioned above, Mal Singh is none else, but a person projected by the respondents for the reasons mentioned above. Before this Court as well, the respondents were given an option to comply with the order, but the conduct is that one of resistance. Such conduct of the respondents' show that the respondents have little respect for law and intend to abuse the process of law to such extent and in such a manner, the respondents can do.

14. The execution of a decree or for that matter an ejectment order is becoming more and more cumbersome as the parties take recourse to the dileatory tactics and in some time the Courts become unwilling tool in the hands of such litigants. The habit of litigants is to delay the process of delivery of possession on false and made up grounds. The present is one of such classic case. Therefore, to instill confidence into the mind of the litigant public that orders are not passed, but are capable of being implementation and that process of the Court cannot be abused, is required to be known. Therefore, it is a case where the respondents have made themselves liable for punishment for violation of eviction orders passed under the Act.”

In **Devinder Singh's case (supra)**, there was a breach of undertaking given to the Court as the tenant got a suit filed through his relations claiming their right in the demised premises and did not deliver possession to the landlord in order to frustrate the eviction order. In this regard, this Court passed the following order:-

“12. On a consideration of the pleas raised before this Court, I am of the opinion that respondent No.1 does not deserve any leniency. He has consciously tried to subvert the process of law and he has defied his own undertaking and the orders of this Court. Even though, he has handed over the possession of the premises but that is evidently on account of the consequences of the present petition staring him in the face.

13. The Court cannot be a silent spectator to the conscious subversion and abuse of the process of law. The respondent No.1, ordinarily, should have been sentenced to imprisonment for the

following reasons:

- i) that he has consciously subverted the process of law and defied the orders of this Court;
- ii) he has resorted to manipulative tactics to deprive the petitioner of his legitimate claim;
- iii) he has forced the petitioner to unwanted litigation i.e. two civil suits in the Courts at Jagadhri and a contempt petition here in this Court. This would have resulted in undue financial constraint on the petitioner and also forcing him into a completely avoidable litigation; and
- iv) wastage of times of the Courts.

However, since the petitioner has now been given the possession and both the respondents have undertaken to withdraw the civil suits filed by them, I deem it appropriate to impose exemplary costs on the respondents instead of sentencing them.

14. The Court thus determines costs for the aforesaid reasons as ₹1,00,000/-, which respondents No.1 and 2 shall pay to the petitioner. Respondent No.1 also undertakes to withdraw the civil suit filed by him in the Court at Jagadhari.

15. Respondent No.2 - Sunil Kumar son of late Murari Lal is also present in the Court. He has also furnished an undertaking in this Court that he will withdraw the civil suit filed by him against the petitioner. Separate undertakings to this effect have been recorded and shall form a part of the records of the proceedings.

16. Out of the costs of ₹1,00,000/- determined, ₹50,000/- shall be paid by respondent No.1 and ₹50,000/- by Sunil Kumar for filing a false, frivolous petition and a false affidavit before the trial Court in support of the civil suit.

The Chief Judicial Magistrate, Yamuna Nagar shall ensure that the costs are recovered from the aforesaid persons.

Copy of the order be sent to the Court of Chief Judicial Magistrate, Yamuna Nagar for compliance, and also to the Court where the civil suits have been filed and are pending, for intimation.”

In **D.M. Belgamvala's case (supra)**, the Supreme Court has passed the order of eviction by using police force.

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Insofar as the judgment relied upon by the counsel for the respondents in **Gopal Chandra Biswa's case (supra)** is concerned, that is not applicable to the facts of the present case.

Thus, from the aforesaid discussion, the conclusion drawn is that the respondents have filed the civil suit in order to avenge their defeat in the eviction proceedings and used this clever device of claiming permissive possession of the other two rooms located on the same floor so that they may not be prosecuted for the forcible occupation or claiming injunction on the basis of unauthorized possession against the true owner which also is not permissible, without giving even an iota of evidence and taking this Court into confidence, creating hurdle in the “peaceful possession” of the petitioner of the demised premises.

The respondents are, thus, held guilty of committing contempt of the process of the Court and are convicted for a period of three months simple imprisonment with fine of ₹2,000/- and in case of non-payment of fine, for another one month simple imprisonment and are also directed to vacate the portion of the first floor, namely, two rooms with common bath room and toilet of Godown/SCF No.154, Grain Market, Sector 26, Chandigarh, within 15 days from today. In case it is not vacated within 15 days by the respondents voluntarily, the petitioner may take the help of the police for getting the vacant physical possession.

September 28, 2016
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No