

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

CIVIL REVISION NO.1402 OF 2016

DATE OF DECISION: FEBRUARY 24, 2016

Sudesh Thakur and another

.....Petitioners

VERSUS

Lambher Singh and another

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Rakesh Gupta, Advocate,
for the petitioners.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this revision is to the order dated 17.02.2016 (Annexure P-1) passed by the Additional District Judge, Chandigarh as also the order dated 09.02.2016 (Annexure P-2) passed by the Rent Controller-cum-Civil Judge (Junior Division), Chandigarh, whereby warrant of possession has been issued in favour of the respondent-landlords on the ground that the orders passed by this Court in Civil Revision No.4712 of 2014 (Saurav Thakur and another Vs. Lambher Singh and another), on 23.07.2014 (Annexure P-3) have been violated, according to which the petitioners were required to deposit the mesne profits by 7th of each month till the physical possession of the demised premises is not handed over to the respondents.

account payee cheque was handed over to the respondent-landlords, which was presented by them on 08.12.2014 at 11.00 A.M. at the counter for clearing and at that moment, the concerned Dealing Clerk had made endorsement on the cheque that the amount was insufficient. He contends that thereafter again on 13.12.2014, the cheque was presented at the counter at 11.25 A.M. and again the same report was made that funds were insufficient for clearing the said cheque, although on a subsequent date i.e. in January 2015, the said cheque was encashed. The stand of the petitioners is that on both the abovesaid occasions i.e. 08.12.2014 and 13.12.2014, the closing balance on the said dates was sufficient enough for encashment of the cheque. He, thus, contends that there is no violation of the orders passed by this Court and the warrant of possession, as issued by the Rent Controller, Chandigarh, cannot sustain and deserves to be withdrawn.

I have considered the submissions made by learned counsel for the petitioners but am not in agreement with the same.

The Civil Revision No.4712 of 2014, as preferred by the petitioner-tenants, was disposed of by order dated 23.07.2014 in the following terms:-

“1. That they will hand over physical vacant possession of the premises to the respondents on or before 31.7.2016.

2. That they will pay all arrears of mesne profits upto date to the respondents within four weeks.

3. That they will continue to deposit the mesne profits by the 7th of each month till the physical vacant possession of the demised premises is handed over to the respondents.

4. That they will not commit any default in payment of arrears

of rent/mesne profits or the monthly rent and that even a single default will disentitle them to the benefit of this order.

5. That if the arrears of rent or the monthly rent or mesne profits are not paid as aforesaid, the landlords shall forthwith be entitled to get the eviction order executed.

6. That the physical vacant possession of the demised premises shall be handed over to the landlords in the condition as it exists today.

7. That if the petitioners make an attempt to deviate from the undertaking, the landlords shall be entitled to apprise the Rent Controller, who shall proceed to get the demised premises vacated and to hand over the physical vacant possession thereof to them by granting police assistance at the first instance.”

A perusal of the above conditions would show that the petitioners were required to deposit the mesne profits by 7th of each month, till the physical possession of the demised premises was not handed over to the respondent-landlords. In case of single default, the benefit, which had been given as per the said order, was to be having no effect. The petitioners were liable to be proceeded to get the demised premises vacated and to hand over the vacant physical possession to the respondent-landlords by granting them police assistance at the first instance on approaching the Rent Controller. The petitioners were, therefore, required to maintain the minimum amount in the account, which would be sufficient for discharge of their liability of the cheque amount, which was handed over by them to the respondent-landlords as mesne profits. Admittedly, twice when the cheque

was presented by the landlords i.e. on 08.12.2014 at 11.00 A.M and 13.12.2014 at 11.25 A.M., the funds were not sufficient and accordingly an endorsement was made by the Bank on the cheque. The requirement, as per the order, was to deposit the mesne profits by 7th of each month. Assuming that 7th of December was a Sunday, the landlords had presented the cheque on the next working day i.e. 8th of December being Monday, which was not encashed by the Bank because of insufficiency of funds. There being default on the part of the petitioners, the orders as impugned in the present revision, cannot be said to be not in accordance with the order dated 23.07.2014.

The plea of counsel for the petitioners that the cheque was not a bearer cheque but an account payee cheque and, therefore, the funds at the time of clearance have to be seen.

This contention of counsel for the petitioners cannot be accepted as the clearance has to be seen at the time of deposit of the cheque and there being insufficient funds at that time, obviously the same could not have been cleared. Not only did this position arise on 08.12.2014 but on 13.12.2014 as well, the situation was same. The plea that on the closing of these respective dates, there was sufficient funds in the account, would not be of any benefit to the petitioner.

In view of the above discussion, there is no merit in the revision and the same stands dismissed.

February 24, 2016
khurmi

(AUGUSTINE GEORGE MASIH)
JUDGE