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

**C.M. No.12460-CII-2015 in/and
C.R. No.1521 of 2015 (O&M)
Date of Decision : 28.03.2016**

Santosh Jain and another

..... Petitioners

Versus

Jugal Kishore Seth and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Arun Jain, Sr. Advocate
with Mr. Amit Jain, Advocate
for the non-applicants-petitioners.

Mr. Ashwani Chopra, Sr. Advocate
with Mr. Harminder Singh, Advocate
for the applicant-respondent No.1.

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

AJAY TEWARI, J. (Oral)

CM-12460-CII-2015

This is an application for directing the petitioners to pay mesne profits/compensation for use and occupation of the demised premises at the market rate during the pendency of the civil revision.

Learned senior counsel for the applicant-landlord-respondent No.1 states that he does not wish to press this application if the main case is taken up for hearing today itself.

Allowed as prayed for. Application stands dismissed as having been not pressed.

CR-1521-2015

This revision has been filed against the concurrent orders of the Courts below evicting the petitioners-tenants on the ground that despite having availed four opportunities the provisional rent was not paid.

As per the record of the case, the provisional rent was assessed on 31.03.2013 and the matter was adjourned for 03.05.2013 for making the payment. On 03.05.2013 the Bar was abstaining from work and the matter was adjourned for 26.05.2013 and on 26.05.2013 again the counsel for the petitioners-tenants sought an adjournment for making the payment and the matter was adjourned for 02.07.2013. Payment having not been made on 02.07.2013 also the eviction petition was allowed.

Learned senior counsel for the petitioners has argued that actually in this case there has been a conspiracy to somehow or the other to evict the petitioners-tenant. As per him the matter was fixed for consideration on 31.03.2013 but the rent was not assessed and the matter was then adjourned to 03.05.2013. Since on 03.05.2013 there was a strike the matter was adjourned to 26.07.2013 and when the petitioners alongwith their counsel went to the Court on 26.07.2013 they discovered that the case was not listed. On having been made inquiries the above fictional chronology was revealed. Learned senior counsel for the petitioners has firstly relied upon the photocopies of the diary maintained by the counsel as well as the photocopy of the brief which indicate that the matter was fixed on 31.03.2013 for consideration, again on 03.05.2013 for consideration and

was again adjourned to 26.07.2013 for consideration. He has further relied upon the observation of the Appellate Authority where the Appellate Authority had accepted that there were cuttings in the dates and has consequently argued that the impugned orders should be set aside and one more opportunity should be granted to the petitioners to make the payment.

Learned senior counsel for the respondent No.1-landlord has however argued that the Appellate Authority had recorded in the order that the issue of cuttings was under inquiry. He has further stated that after regular inquiry the entire matter has been dropped which shows that though there were cuttings they were bonafide and made contemporaneously. As per him, it is unthinkable that the Ld. Judge would not only change the dates but also pre-date the orders. He has further stated that a detailed order was passed on 31.03.2013. Further there was no dispute regarding the rate of rent or the period of which the rent was due and the Ld. Judge only undertook the mathematical exercise for computing the said rent. Learned senior counsel for the respondent No.1 has emphasized that once there was no dispute regarding rate of rent and for the period of which it was due and only mathematical exercise had to be done there was no occasion for the Court to adjourn the matter for 03.05.2013 and then again and again adjourn for the purpose of computation/assessment. In the end he has relied upon the judgment of the Hon'ble Supreme Court in the matter of *Bhavnagar University vs. Palitana Sugar Mill (P) Ltd. and others, reported as (2003) 2 Supreme Court Cases 111*, wherein their Lordships while relying upon the judgment in the matter of *State of Maharashtra v. Ramdas Shrinivas Nayak, reported as (1982) 2 SCC 463* have observed as follows:-

“When we drew the attention of the learned Attorney-General to the concession made before the High Court, Shri A.K. Sen, who appeared for the State of Maharashtra before the High Court and led the arguments for the respondents there and who appeared for Shri Antulay before us intervened and protested that he never made any such concession and invited us to peruse the written submissions made by him in the High Court. We are afraid that we cannot launch into an inquiry as to what transpired in the High Court. It is simply not done. Public policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. Judgments cannot be treated as mere counters in the game of litigation. We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in Court.....”

Keeping in view the above facts in my considered opinion, no relief can be granted to the petitioners-tenants.

Consequently, the petition is dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

March 28, 2016

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**(AJAY TEWARI)
JUDGE**