

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

CR No.4138 of 2016(O&M)

Date of decision:4.7.2016

Hemant Mangla

....Petitioner

VERSUS

Sumit

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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

Present: Mr. R.S. Hooda, Advocate for the petitioner.

REKHA MITTAL, J.

The present petition has been directed against order dated 14.06.2016 (Annexure P-4) passed by the Civil Judge (Junior Division), Mewat, whereby an application seeking police help, filed by the petitioner has been dismissed.

Counsel for the petitioner contends that a suit for permanent injunction in regard to shop detailed in para 1 of the plaint (Annexure P-1) was filed by the petitioner against the respondent restraining him not to dispossess the petitioner from the suit property forcibly and illegally. Along with the suit, an application (Annexure P-2) was filed for grant of interim injunction against interference in peaceful possession and tenancy of the petitioner over the shop in question and also from dispossessing him till decision of the suit. The application for temporary injunction was disposed of by the trial Court vide order dated 04.06.2016 (Annexure P-3)

and the respondent was directed not to dispossess the petitioner from disputed shop in a forcible manner. It is further submitted that the application was decided by the trial Court in presence of counsel for respondent namely Sh. Akshay Kumar Gupta, Advocate. Thereafter, the petitioner filed an application for providing police help for implementation of the stay order dated 04.06.2016 but the same has been wrongly and illegally dismissed by the trial Court vide order (Annexure P-4) impugned in the present petition.

To assail the impugned order, it is argued with vehemence that as the trial Court allowed the application for stay after taking into consideration contention of the petitioner that respondent on 02.06.2016 after he (petitioner) filed the present suit forcibly dispossessed him and put his lock in the disputed shop with further observations that there is no documentary proof showing ownership/possession of the respondent/defendant, there was no reason for the trial Court to dismiss the application for providing police help.

Another submission made by counsel is that plea of the petitioner that he has been forcibly dispossessed from the demised premises only mean that the respondent has put his lock on the disputed shop when otherwise karyana goods and other miscellaneous articles belonging to the petitioner are still lying in the shop in question. Counsel has further submitted that Court can order restoration of possession to the party wronged and can provide police protection to implement such order, therefore, in the circumstances of the present case, the Court should have provided the necessary police help. In support of his contention, he has

referred to judgment of Hon'ble the Supreme Court of India Meera Chauhan Vs. Harsh Bishnoi & anr., 2007(2) Latest Judicial Reports 478.

I have heard counsel for the petitioner, perused the paper book and carefully gone through the judgment cited at bar.

The suit for injunction was filed by the petitioner on 01.06.2016 praying for a decree of permanent injunction restraining the respondent/defendant from dispossessing the petitioner/plaintiff from the shop in dispute and also from taking forcible possession of the same. It has also been averred that in case, the respondent succeeds in dispossessing the plaintiff from the property during pendency of the suit, a decree of possession may be passed in the alternative. It appears that in view of urgency involved in the matter, notice was ordered to be issued to the respondent/defendant for 04.06.2016. On that date, Sh. Akshay Kumar Gupta, Advocate, put in appearance on behalf of the respondent. Without any reply having been filed by the respondent, the trial Court heard the application for grant of interim injunction and passed order dated 04.06.2016 (Annexure P-3). In the first para of the order, there is a clear reference that counsel for the petitioner stated that the petitioner has been forcibly dispossessed on 02.06.2016 and the respondent has put his lock on the disputed shop. On the contrary, counsel for the respondent contended that respondent is in possession of the disputed shop but no documentary proof seems to have been produced by him in this regard at that time.

The trial Court neither adverted to contention of the petitioner that he has already been dispossessed from the shop nor recorded any finding that he has been so dispossessed on 02.06.2016 after the suit was

instituted. It further appears that the petitioner did not file an application seeking restoration of possession, therefore, there was no occasion for the trial Court to go into the question of alleged dispossession and to record a finding that he has been dispossessed during pendency of the suit and thus entitled to seek restoration of possession. Under these circumstances, the petitioner cannot derive any advantage to his contention from the judgment in Meera Chauhan's case (supra), wherein it has been held that Court can order restoration of possession to the party wronged and can provide police protection to implement such order.

The petitioner made a clear admission that he was dispossessed from the shop in question even before disposal of the stay application directing the respondent/defendant not to dispossess the plaintiff from disputed shop in a forcible manner. The petitioner cannot take advantage of an error committed by the trial Court whereby the trial Court despite knowing it fully well that the petitioner has allegedly been dispossessed on 02.06.2016 but still proceeded to pass an interim order directing the respondent not to dispossess the petitioner. As the petitioner was admittedly not in possession of the disputed shop by the time order of interim injunction was passed, there was no occasion for the trial Court to provide any police help for implementation of the stay order. I would hasten to add that it cannot be left to be decided by the police as to who was in possession of the shop in question on the date of institution of the suit and whether the petitioner has been dispossessed therefrom on 02.06.2016 or entitle to get back possession of the disputed shop.

In view of the above, I do not find any error much less illegality in the impugned order that would call for intervention in exercise of supervisory jurisdiction of this Court.

Dismissed.

JULY 4, 2016

‘D. Gulati’

(REKHA MITTAL)

JUDGE