IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.434 of 2016 (O&M)
Date of decision : 25.07.2016

Puran Chand

...Petitioner

Versus

Sandeep Kumar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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. H.S. Bhullar, Advocate for the petitioner.

Mr. Raman Mahajan, Advocate for the respondents.

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AMIT RAWAL, J. (Oral)

The petitioner-appellant before the lower appellate Court, is aggrieved of the impugned order, whereby while taking into consideration the interim prayer, the lower Appellate Court vide order dated 24.12.2015 ordered for furnishing of the bank guarantee in counter claim decreeing the claim of damages to the tune of ₹25,000/- per month w.e.f. 15.04.2009 till the actual restoration of possession of suit property.

Mr. H.S. Bhullar, learned counsel appearing on behalf of petitioner submits that order imposing the condition of furnishing bank guarantee was not only harsh but onerous as it is yet to be determined whether the appellant is liable to pay the use and occupation charges. The dispute is between the son and the father. Son is none-else but the counter claimant. Court ought to have not imposed such harsh condition and, therefore, liable to be modified in terms of the personal security or any other security but not the bank guarantee.

Mr. Raman Mahajan, learned counsel appearing on behalf of the Decree Holder submits that the order dated 24.12.2015 for furnishing of the bank guarantee was valid till 13.02.2016, by the time when the revision petition was taken up by this Court, the order stood vacated, therefore interim order would be inconsequential. He further submits that statement made in the notice of motion order qua pendency of the suit is incorrect as appellant had withdrawn the suit. It is only counter claim which continued as per the provision of Order 8 Rule 6-D of the Code of Civil Procedure and urges this Court for affirmation of the findings under challenge.

I have heard learned counsel for the parties and appraised the paper book

The factum of the order in force is not denied by Mr. Bhullar, Advocate. Since the bank guarantee was not furnished by 13.02.2016, the order stood automatically vacated. No doubt Decree Holder has yet not chosen to seek execution. This Court called upon the counsel for the petitioner to show indication/intention to furnish bank guarantee so that Court would have considered in condoning the period. Mr. Bhullar, submits that his client is unable to give such guarantee.

Provision of Rule 5 Order 41 is no longer in dispute in the cases of money decree. The Court can always impose condition on the aggrieved party challenging the decree. The condition of furnishing bank guarantee in my view is strictly in terms of provision of Rule 5, Order 41.

I am of the view that there is no force in the statement of Mr. Bhullar, that the imposition of the condition of furnishing bank guarantee is most onerous and harsh. In fact, as noticed above, is in consonance with the provision, aforementioned. Moreover, interim relief granted to the petitioner as per the order under challenge stood already vacated as having not complied with.

No ground for interference is made out.

Order cannot be said to have been passed without jurisdiction.

Dismissed.

25.07.2016 **(AMIT RAWAL)**
pawan **JUDGE**

Whether speaking/reasoned: Yes

Whether reportable:- Yes/No