

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

-.-

Civil Revision No. 5634 of 2016

Date of decision: 01.09.2016

Amar Singh

.....Petitioner

vs

Om Parkash and others

.....Respondents

Coram: HON'BLE MRS. JUSTICE REKHA MITTAL

-.-

*Present: Mr. Gobind Korla, Advocate
for the petitioner*

-.-

Rekha Mittal, J.

The present petition has been directed against order dated 18.05.2016 passed by the Civil Judge (Senior Division) Ludhiana whereby the application filed by the petitioner under Section 151 of the Code of Civil Procedure (in short CPC), has been dismissed.

The respondents/plaintiffs filed a suit for recovery of Rs.9,00,000.00 on account of use and occupation charges/mense profits for land measuring 3 kanals 13 marlas, detailed in head note of the plaint, with effect from 01.05.2004 to 30.04.2007 @ Rs.25,000.00 per month along with interest @ 12% per annum for the aforesaid period.

The petitioner filed the application under Section 151 CPC for staying the suit till final decision of the matter pending before Hon'ble the Apex Court.

After filing of reply by the respondents/plaintiffs and having heard counsel for the parties, the application was dismissed by the trial

Court in view of its observations recorded in para 7 of the impugned order, a relevant extract therefrom reads as follows:-

“7. The present suit is filed by plaintiff for recovery of mense profit and the matter involved in the present case is different than the cases wherein the order of status quo has been passed by Ld. Apex Court. The plaintiff has filed the present suit for recovery against the defendant for the use of the suit property, which has been illegally occupied by the defendant. The order of status quo passed by Hon'ble Apex Court is with regard to the cases wherein the possession of the property is in dispute, so the order of status quo with regard to the staying the proceedings of the Court does in any manner effects the present case. Hence application stands dismissed. Now to come upon 26.05.2016 for evidence of defendant subject to last opportunity.”

Counsel for the petitioner has submitted that as there is a serious dispute between the parties with regard to entitlement of the respondents to recover possession of the property in question and Hon'ble the Supreme Court has passed the order of status quo in a petition for Special Leave to Appeal (Civil) No. 3343 of 2014 captioned *Om Parkash vs. Amar Singh*, it would be in the fitness of things if further proceedings in the suit filed by Om Parkash and others seeking recovery of mesne profits, is stayed till disposal of appeal pending before the Apex Court. It is further submitted that if suit filed by Om Parkash is allowed, the decree would be required to be challenged before the Court of appeal and, thus, there would be multiplicity of proceedings between the parties.

I have heard counsel for the petitioner and perused the paper

book particularly the order impugned.

A reading of order dated 21.12.2013 (Annexure P3) passed by this Court in Civil Revision No. 7019 of 2013 would manifest that Om Parkash recovered possession of the suit property during execution proceedings and a challenge thereto was laid by Amar Singh who had taken an objection before the executing Court when decree for possession was put in execution. The order passed by this Court dated 23.12.2013 is subject matter of challenge before Hon'ble the Apex Court in aforesaid petition SLP (C) 3343 of 2014.

There is a specific provision in CPC providing for stay of suit, a relevant extract therefrom reads as follows:-

“10. Stay of suit - No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.

Explanation- The pendency of a suit in a foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action.

Concededly, the suit filed by the respondents does not attract the provisions of Section 10 CPC to warrant stay of proceedings. As the legislature in its wisdom has specifically provided for a situation, where a

suit pending before a Court is liable to be stayed, in case necessary conditions envisaged in Section 10 CPC are complied with and the petitioner has not sought stay of the proceedings by invoking Section 10 CPC sufficient to show that his case is not covered under Section 10 CPC,, no such application filed by the petitioner by invoking inherent jurisdiction of the Court under Section 151 CPC can be allowed. In this view of the matter, I do not find any error much less illegality in the impugned order warranting intervention in exercise of supervisory jurisdiction of the Court.

Dismissed *in limine*.

(Rekha Mittal)
Judge

September 01, 2016
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Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No