

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

Civil Revision No. 6881 of 2016

Date of decision: 12.10.2016

Navraj Dheer

...Petitioner

Vs.

Prem Lata Kainth

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present : Mr. I. P. S. Kohli, Advocate
for the petitioner.

RAJIV NARAIN RAINA, J. (Oral)

The petitioner has approached this Court under article 227 of the Constitution of India against the order of executing Court issuing warrants of possession on presentation of application without issuing notice in a rent proceeding.

The petitioner is a tenant facing eviction by an ejectment order passed by the Rent Controller under Section 13 of the Haryana Urban Rent (Control & Eviction) Act, 1973. While the petitioner has approached this Court directly under Article 227 of the Constitution, he has effective remedy before the appellate Court where the appeal against the eviction order is pending for 02.11.2016. In the application, it is stated that an application has been filed for staying the operation of the orders passed by the Rent Controller evicting the petitioner from the demised premises but no specific order has been passed since the same has not been taken up and notice has been issued in the main appeal. The application under Order 39 Rule 1 CPC i.e. the stay application and the main case, both has been posted for 02.11.2016 for hearing.

It is a case of the petitioner that in case the warrants of

possession are executed, the petitioner will be evicted and the appeal would be rendered infructuous. Learned counsel for the petitioner relies on the decision of the Supreme Court in ***Mool Chand Yadav And Anr. vs. Raza Buland Company, (1982) 3 SCC 484*** guiding the Court that if judicial approach requires during the pendency of the appeal the operation of an order having serious civil consequences must be suspended. More so, when appeal is admitted. To make it easier for the appellate Court of the significance of this short order passed by the Supreme Court in the present and future cases, the entire order is reproduced herein below to save its time:

1. Special leave granted.

2. The matter discloses a battle of wits rather than of any legal substance or injured rights. There is one room in Hari Bhawan which at present is occupied by a gentleman called Mool Chand Yadav who is described as General Manager of U.P. State Sugar Corporation Ltd., Rampur Unit (Corporation for short). The dispute going on is whether Hari Bhawan is a property which has vested in the Corporation and whether the Corporation is entitled to occupy it and whether a part of it can be used by the General Manager of the Corporation. In a suit filed by respondents an injunction was granted restraining the present appellants or their officers from occupying Hari Bhawan against which an appeal was filed by the present appellants which is pending. Subsequently, an application was made alleging flouting of the Court's order and the Court was invited to hold the Corporation and its Officers in contempt and to punish them for the same. This application resulted in the following Order:

Accordingly the application Exhibit IV-1 is being accepted. One month's time is being granted to defendant, Mool Chand Yadav, to vacate the disputed room and if he does not do so all the movable property of defendant Nos. 2 and 3 will be attached in 20 compliance with the order of temporary injunction passed on 2.11.1979.

An appeal from this order was preferred being F. A. F.O. No. NL. of 1982. We are told that appeal was admitted and notice of motion was taken out for suspension of the Order under appeal. But the Division Bench of the Allahabad

High Court declined to grant stay. Hence, this appeal by Special Leave Petition.

3. We heard Mr. S.N. Kacker, learned Counsel for the appellants, and the respondents appeared by Caveat through Mr. Manoj Swarup, Advocate. We are not inclined to examine any contention on merits at present, but we would like to notice of the emerging situation if the operation of the order under appeal is not suspended during the pendency of the appeal. If the F. A.F.O. is allowed, obviously Mool Chand Yadav would be entitled to continue in possession. Now, if the order is not suspended in order to avoid any action in contempt pending the appeal, Mool Chand would have to vacate the room and handover the possession to the respondents in obedience to the Court's order. We are in full agreement with Mr. Manoj Swarup, learned advocate for respondents, that the Court's order cannot be flouted and even a covert disrespect to Court's order cannot be tolerated. But if orders are challenged and the appeals are pending, one cannot permit a swinging pendulum continuously taking place during the pendency of the appeal, Mr. Manoj Swarup may be wholly right in submitting that there is intentional flouting of the" Court's order. We are not interdicting that finding. But judicial approach requires that during the pendency of the appeal the operation of an order having serious civil consequences must be suspended. More so when appeal is admitted. Previous history of litigation cannot be overlooked. And it is not seriously disputed that the whole of the building, Hari Bhawan, except one room in dispute is in possession of the Corporation. We accordingly suspend the operation of the order dated 6th August 1982 directing the appellants to handover the possession of the room to the respondents till the disposal of the first appeal against that order pending in the High Court of Allahabad. Mr. Manoj Swarup requests that both the earlier and later Appeals should be heard together as early as possible, We order accordingly and request the High Court if it considers proper in its own discretion to hear both the appeals as expeditiously as possible in order to avoid the continuance of the boiling situation. The appeal stands disposed of. There shall be no order as to costs.

However, in the presence of power in the appellate Court to consider the application for stay either alone or together with the main appeal, this Court dissuades itself from passing any order except to call upon the learned appellate Court to take up at least the stay matter immediately and pass orders thereon. The appellate Court would be at

liberty to either decided the injunction application separately or with the main appeal while disposing of both of them in a common order but the executing Court, meanwhile, would hold its hands and wait to receive order from the appellate Court.

With these observations and directions, the petitions is disposed of.

October 12, 2016
Ansari

(RAJIV NARAIN RAINA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No.</i>
<i>Whether Reportable</i>	<i>Yes/No</i>