

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

CR No.7092 of 2016(O&M)

Date of decision:8.11.2016

Dinesh Vashishta and anotherPetitioners

VERSUS

Lokesh VashishthaRespondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Ms. Deepa Jain, Advocate for the petitioners.

REKHA MITTAL, J. (Oral)

The present petition directs challenge against order dated 17.09.2016 (Annexure P-1) passed by the Civil Judge (Junior Division), Faridabad whereby objections filed by the petitioners have been dismissed.

Counsel for the petitioners has submitted that the respondent (decree holder) filed a suit for possession, mandatory and permanent injunction in respect of a shop measuring 48.5 square yards situated in the revenue estate Ballabgarh and forming part of house No.D-956, Chawla Colony, Ballabgarh, District Faridabad. The suit was decreed vide judgment and decree dated 26.05.2015. The respondent filed an application for execution of the decree. The petitioners (judgment debtors) filed the objections but the same have been wrongly and illegally dismissed by the executing Court.

To substantiate her contention, counsel has two-fold submissions to make. It is argued that the judgment and decree passed by the trial Court has been challenged in appeal, therefore, the matter is

subjudice. The Appellate Court passed an order restraining the decree holder from recovering possession except in due course of law. It is argued that as the appeal is pending, the respondent/decreed holder is not entitled to recover possession of the suit premises in execution of a decree that has not attained finality. Another submission made by counsel is that Ms. Anjula @ Anju – petitioner No.2 initiated proceedings under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (in short ‘the Act’) and in the said case, an order has been passed in favour of the petitioner on 05.04.2010 whereby the respondents including Lokesh Vashishtha were directed not to communicate or attempt to communicate in any form whatsoever with the aggrieved person and not to enter upon the premises so long as the same is in possession of the complainant and she is not ejected therefrom by process of law.

I have heard counsel for the petitioners, perused the paper-book particularly the order impugned.

No doubt, the petitioners have preferred an appeal against the judgment and decree dated 26.05.2015 but the Appellate Court has restrained decree holder from recovering possession except in due course of law. The process of execution initiated by the respondent-decreed holder cannot be termed as taking over possession forcibly, illegally or by a process not recognized by law.

So far as the order passed under Section 12 of the Act is concerned, the respondent filed a suit in the year 2009 and the same has been decided in the year 2015. Any right of petitioner No.2 with regard to a shared household could be asserted even before the Civil Court. This apart, an order passed in those proceedings pertains to residential house

and not to the shop in question. In this view of the matter, I do not find any error much less illegality in the impugned order warranting intervention.

Dismissed in *limine*.

NOVEMBER 8, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no