

Civil Revision No.683 of 2014 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R.No.683 of 2014 (O&M)

Date of Decision: July 11, 2016

Sanjeev Khosla & others

...Petitioners

Versus

A.P.Super Market, Panchkula & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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

Present: Mr.Nitin Kumar, Advocate,
for the petitioners.

Mr.Abhineet Taneja, Advocate,
for the respondents.

AMIT RAWAL, J. (Oral)

CM No.13130-CII of 2016

Translated copy of the cross-examination of the petitioner is
taken on record.

CM stands disposed of.

CR No.683 of 2014

Petitioner-landlord-decree holders are aggrieved of the

impugned order, whereby the objections filed on behalf of the respondent-judgment debtors have been allowed and the execution petition filed by the petitioners seeking execution of the judgment and decree dated 21.9.2011, has been dismissed.

Mr.Nitin Kumar, learned counsel for the petitioner-decree holders submits that in a suit seeking possession by way of ejectment of the respondents, the following decree was passed:-

“Value for the suit for the purpose of court fee Rs.15,395/-
Value for the suit for the purpose of jurisdiction
Rs.2,72,550/-.

DECREE SHEET

In the Court of Shri Jaibir Singh, Additional Civil Judge
(Sr.Division), Panchkula.

Civil Suit No.182 of 2009.

Date of Institution: 09.12.2009/15.04.2010

Date of Decision: 21.09.2011

1. Sh.Sanjeev Khosla son of Dr.R.K.Khosla,
2. Sh.Sanjeev Khosla (HUF) through its Karta Sh.Sanjeev Khosla.
3. Smt.Alpna Khosla wife of Sh.Sanjeev Khosla,
All residents of House No.997, Sector-2, Panchkula.

...Plaintiffs

Versus

1. M/s A.P.Super Market through its proprietor Sh.Pawan

Kumar son of late Sh.Lal Chand, Tenant Ground Floor (excluding backside courtyard), SCF No.104, Sector-11, Panchkula.

2. Sh.Pawan Kumar son of Late Sh.Lal Chand Proprietor of M/s A.P.Super Market, resident of House No.2052, Sector-15, Panchkula.

...Defendant.

Suit for a decree for possession by ejectment of the defendants in respect of Ground Floor (excluding Backside courtyard), SCF No.104, Sector-11, Panchkula and for the recovery of Rs.20,950/- on account of rent for the month of November, 2009 on the basis of oral as well as documentary evidence-plaint under order 7 Rule 1 C.P.C.

Plaint presented on: 09.12.2009.

This suit coming today for final disposal before me (Jaibir Singh, Additional Civil Judge (Senior Division), Panchkula in the presence of Shri V.K.Verma, Advocate for the plaintiffs and Shri M.K.Chauhan, Advocate for the defendants.

It is ordered that the suit of the plaintiffs succeeds and it hereby decreed alongwith costs. The defendants are directed to handover the vacant possession of the ground floor (excluding backside courtyard SCF No.104, Sector-11, Panchkula to the plaintiffs within a period of two months. The defendants are also directed to make the payment of the rent amount for the month of November 2009 @ Rs.20950/-, thereafter, after termination of their tenancy, the defendants are also ordered to make the payment of mesne profits of

Rs.25,000/- per month till the date of handing over the vacant possession. It is clarified that if the vacant possession is not handed over by the defendants to the plaintiff within a period of two months, then they shall be liable to make the payment of mesne profits @ Rs.50,000/- per month instead of Rs.25,000/-.

MEMO OF COSTS

	Plaintiffs	Defendants
1. Stamp for plaint	15,395-00	00-00
2. Stamp for power	02-00	02-00
3. Pleader's fee	550-00	550-00
4. Sub for witnesses	350-00	00-00
5. Misc.	10-00	00-00
6. Process fee	50-00	00-00
7. Stamp for exhibits	00-00	00-00
TOTAL	16,357-00	552-00

Given under my hand & seal of the Court on this 21st day of September, 2011.

(Jaibir Singh)
Addl.Civil Judge (Sr.Division),
Panchkula

Note: This decree sheet contains two pages and both the pages have been checked and signed by me.

(Jaibir Singh)
Addl.Civil Judge (Sr.Division),
Panchkula”

According to the decree, the respondent-judgment debtors were to hand over the possession within two months, failing which they were to pay the mesne profits as envisaged in the decree. The story coined by the respondents of handing over the possession on 17.11.2011 had not been proved. On the contrary, a legal notice Annexure P2 dated 30.11.2011 was served intimating about handing over of the possession. Annexures P3 and P4 are the documents dated 8.12.2011 of handing over and taking over the possession and, thus, it was beyond the period prescribed in the decree and, therefore, the decree holders are entitled to the mesne profits and, thus, urges for setting-aside of the impugned order and remanding back the matter to the trial Court, in essence restoration of the execution application.

Mr.Abhineet Taneja, learned counsel for the respondent-judgment debtors submits that in the cross-examination of the petitioner, it has surfaced that the defendant-tenants had handed over the possession few days before 8.12.2011. On the contrary, the defendant-tenants had taken over the new premises, i.e., SCO No.99, Sector 11, Panchkula. Lease deed dated 1.11.2011 in this regard had been executed. The sale receipt has been produced on record through M/s Hanuman Trader. Even the President of the Market Committee had also endorsed this fact by appearing in the witness box. On the contrary, there is no other

corroborative evidence except the self serving statement of the landlord-petitioner and rightly so, the objections have been accepted and execution application dismissed and, thus, urges for affirming the findings.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and substance in the submission of Mr.Nitin Kumar.

It is the conceded position on record that the mesne profits were tendered in the execution proceedings and same were accepted by the landlords. Once the landlords had voluntarily suffered a statement that the possession was handed over few days before 8.12.2011, the execution of the receipt was to avoid legal complication as noticed by the trial Court. On the contrary, lease deed dated 1.11.2011 has been produced on record to show that the respondents had taken a new premises. The statements of the aforementioned witnesses have gone unimpeached, rather story shows that the respondent-tenants had actually handed over the possession to the landlords, who had been unnecessarily asking for mesne profits by invoking penalty clause. The entire documentary evidence brought on record by the parties has been noticed by the trial Court.

I am of the view that the trial Court, after examining the oral

and documentary evidence, has rightly accepted the objections. I do not find any illegality and perversity in the order under challenge. The objections have rightly been accepted. No ground for interference is made out.

Revision petition stands dismissed.

July 11, 2016
ramesh

(AMIT RAWAL)
JUDGE