IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 18.02.2016

1. Civil Revision No.7791-2013

Union Bank of India

... Petitioner(s)

Versus

Suresh Arora and another

... Respondent(s)

AND

2. Civil Revision No.5033-2014

Suresh Arora

... Petitioner(s)

Versus

Union Bank of India and another

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH DHALIWAL

1) Whether Reporters of the 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. Yogesh Goel, Advocate,
for the petitioner in CR-7791-2013 and
for respondent No.1 in CR-5033-2014.

Mr. Bharat Gupta, Advocate,
for the petitioner in CR-5033-2014 and
for respondent No.1 in CR-7791-2013.

Paramjeet Singh Dhaliwal, J.

This order shall dispose of Civil Revision No.7791-2013 and Civil Revision No.5033-2014 as both arise from the order dated 19.07.2013 (Annexure P-1) passed by learned Civil Judge (Sr. Divn.), Bhiwani.

Before proceeding further, a brief reference to the facts is necessary which are being extracted from Civil Revision No.7791-2013.

Brief facts of the case are to the effect that the respondents filed execution petition for enforcement of the judgments and decrees dated 18.02.2003 and 07.01.2004 passed by learned Addl. Civil Judge (Sr. Divn.), Bhiwani and learned District Judge, Bhiwani, respectively, whereby the petitioner-judgment debtor was directed to vacate the property in dispute till 30.05.2015 along with future *mesne profit* @ Rs.49,500/- per month from 01.05.2005 till its vacation. The petitioner-judgment debtor put in appearance and moved an application for giving two months time to vacate the building under the possession of the petitioner, however, the said request was declined by the Executing Court. Feeling aggrieved, the petitioner-bank filed CR-3262-2005 in this Court for extension of time in vacating the disputed property and the petitioner was directed to vacate the premises within two months. Vide order dated 19.02.2007 passed by learned Additional Civil Judge (Sr. Divn.), Bhiwani, it was held that the judgment debtor cannot be directed to make the *mesne profit* at this stage until and unless issues are framed and evidence is recorded, also SDO, B & R was appointed as local commissioner with the direction to submit his report regarding the existing position of the property in dispute along with the report regarding damage caused to the building, if any. Thereafter, objections to the report of local commissioner were called. Out of pleadings of parties, following issues were framed:

> "*1. Whether the decree holders are entitled to get the mesne profit along with compensation of the damages be caused by the JD in the tenanted premises?OP (DHs).*
>
> *2. Whether the JD has caused the damage to the rented property owned by the Dhs?OP (Parties).*
>
> *3. Whether the present execution is not maintainable in the present form?OP (JD).*
>
> *4. Relief."*

Vide impugned order dated 19.07.2013, the Executing Court after considering the evidence led by the parties and arguments advanced by learned counsel for the parties, respectively, held that the decree holders/respondents are entitled to recover a sum of Rs.148,000/- as damages plus Rs.48,915/- as electricity bill plus 5% surcharge plus Rs.5117/- as water bill plus Rs.2,000/- per month *mesne profit* for the period from 11.08.2005 to 09.03.2007 along with interest @ 6% per annum from the petitioner-judgment debtor with the direction to the petitioner to pay the same within a period of two months from the date of judgment failing which, the decree holders are entitled to get interest @ 9% per annum from the date of accrual till realization. Hence, this revision.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner-judgment debtor has vehemently contended that the impugned order passed by the Executing Court has been passed without considering the material evidence on record. The petitioner-bank vacated the premises and information was sent vide notice dated 11.03.2005 to the respondent apprising them of the fact that the bank had vacated the building and they could take possession of the same. However, the respondents did not take any step to take over possession of the building despite the notice duly sent by the petitioner. The executing court has wrongly awarded the compensation for the period between vacation of premises by the petitioner-bank and actual possession being taken over by the respondents. The petitioner-bank had discharged its duty with respect to the eviction of the tenanted premises by issuing notice dated 11.03.2005, therefore, the petitioner cannot be held liable to pay any amount for the time period between the vacation by the petitioner-bank and actual taking over the possession by the respondents.

Per contra, learned counsel for the respondents has vehemently contended that the petitioner-bank without following the due procedure and diligence, broke the entire basement and staircase and made severe holes in the roof and damaged the entire building. The negligent act of the petitioner-bank led to complete destruction of basement being the foundation of the building. The possession of the building was handed over to the respondents on 09.03.2007 through Bailiff. The respondents did not take the possession of the disputed property as the same was completely damaged and was not in useable condition. The respondents have led evidence to prove the damages caused to the building and the money spent to restore the building into a useable/tenantable condition. However, the Executing Court has granted the damages and *mesne profit* on the lower side and the same may be enhanced.

I have considered the rival contentions of learned counsel for the parties.

By filing the execution petition, the respondents claimed the amount incurred by them to restore the building to its actual position and further prayed for grant of *mesne profit*.

Perusal of file reveals that the respondents examined H.L.Juneja as DHW 3, who on inspecting the building on 31.03.2007, quantified the damage to the building to the tune of Rs.1,48,000/- and his report has been relied upon by the respondents. The Executing Court has rightly held that the respondents have no right to claim the amount over and above the amount as assessed by H.L.Juneja, DHW 3 and has rightly ignored the assessment made by J.L.Juneja DHW 7. On the other hand, the Executing Court has rightly held that report submitted by P.M. Sharma is misconceived as on the said report, objections were taken and the petitioner cannot be allowed to approbate and reprobate qua the same.

With regard to electricity bill, the Executing Court has rightly held that till the time, the vacant possession of the building was taken, the liability of the electricity bill was on the petitioner and it is liable to pay a sum of Rs.48,953/- plus 5% surcharge i.e. the electricity bill pending in respect of electricity connection No.B-11 EC 210128 along with bill outstanding over the water connection to the tune of Rs.5117/-.

The Executing Court has rightly recorded a finding of fact that the petitioner-judgment debtor had written a letter to the respondents-decree holders for taking the possession and if there was any delay, the same was on the part of the respondents-decree holders and the only relief which can be granted to them is that symbolic possession of the building was with the petitioner-bank. In such circumstances, the Executing Court has rightly granted the *mesne profit* to the respondents @ Rs.2,000/- per month from the date of vacation of the building till the taking over the possession by the respondents through the process of the court.

Learned counsel for the parties have failed to show that finding of fact recorded by the Executing Court is perverse or illegal or mis-appreciation of the material evidence on record. In revision, the Court has limited power and cannot re-appreciate the evidence. Consequently, the finding of fact recorded by the Executing Court does not warrant interference in civil revision.

Dismissed.

18.02.2016 **(Paramjeet Singh Dhaliwal)**
parveen kumar **Judge**