

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

Civil Revision No.8335 of 2014

Date of Decision: 29.09.2016

Prem Chand

.....Petitioner

Vs

Yashpal Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Rajan Bansal, Advocate
for the petitioner.

Mr. H.S. Kathpal, Advocate
for the applicant.

Mr. Amit Goyal, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioner has challenged the order dated 19.07.2014 passed by Civil Judge (Jr. Divn.) Bathinda whereby suit for possession under Section 6 of Specific Relief Act (hereinafter to be referred as 'the Act') filed by the plaintiff/petitioner was dismissed.

[2]. Brief facts as gathered from the record are that plaintiff/petitioner filed a suit for recovery of possession of shop which is part of building bearing M.C. No.244 situated at Kamal Cinema Road, Bathinda on the premise that the suit property

was owned and possessed by the defendant. Ground floor was taken on rent by the plaintiff/petitioner in the year 1971. Present rate of rent of the shop was pleaded to be Rs.1,000/- per month. From the very inception of the tenancy, plaintiff was carrying on business of barber shop under the name and style of 'Prem Hair Dresser'. Electricity meter was installed in the shop premises in the name of Ram Kumar cousin of the plaintiff. Plaintiff claimed that he was paying the rent regularly in advance to the defendant-landlord. However, defendant did not issue any receipt. Lastly the advance rent was paid for the month of October 2009 to the defendant on 05.10.2009.

[3]. It was submitted by the plaintiff that due to increase in rent in the locality, defendant started demanding enhanced rate of rent and the same was refused by the plaintiff as he was prepared only for reasonable enhancement. Plaintiff claimed that the defendant in a well planned conspiracy managed to dispossess him from the shop on 20.10.2009. The son of the defendant along with his friends threatened the plaintiff on the said date and asked him to vacate the premises within two-three hours. Defendant being part of that conspiracy did not respond to the request of the plaintiff and in the evening, with police help the defendant started throwing out the articles of the shop. Allegation of misuse of power by ASI Roop Chand was alleged.

Son of the plaintiff was given beatings. ASI Roop Chand took the plaintiff and his son to the police station without any warrant and without there being any order of eviction passed by the competent Court.

[4]. It was alleged by the plaintiff that his shop was virtually looted by the defendant and others. Plaintiff and his son were kept in illegal confinement and were also given beatings. Even plaintiff and his son were abused in the police station by the defendant along with his son and others. ASI Roop Chand forcibly got signatures of the plaintiff on some blank papers and forms. Wife of the plaintiff also sent telegram to the higher authorities in this regard. Plaintiff remained under shock. After recovering from shock and terror, the plaintiff collected his courage and approached the Police Authorities, but the police did not take any action. Process of the Court under Section 156(3) Cr.P.C., was invoked for registration of appropriate case. With this background the suit came to be filed.

[5]. Defendant contested the suit on all counts. Defendant contested the claim of the plaintiff on the ground that suit was barred in view of provision of Order 23 Rule 1 CPC as the plaintiff himself executed the compromise on 22.10.2009 to the effect that he was willing to vacate the tenanted portion and

thereafter handed over the vacant possession to the defendant after having received a sum of Rs.75,000/- from the defendant. Defendant claimed that the plaint was liable to be rejected under Order 7 Rule 11 CPC for non-disclosure of cause of action.

[6]. After competition of pleadings, trial Court framed the necessary issues.

[7]. After appraisal of the evidence led by the parties, trial Court adverted to issue No.1 and held that though the person in possession cannot be dispossessed, except in due course of law. Even, though there was no order of eviction passed by the competent Court, but compromise Ex.D-1 effected between the parties on 22.10.2009 was proved wherein a compromise was effected between the parties to the effect that the plaintiff will vacate the shop in question and defendant will pay an amount of Rs.75,000/- to the plaintiff in lieu thereof. Since both the parties mutually agreed by way of compromise, therefore, plaintiff cannot be allowed to wriggle out from consequences of compromise. Since the possession was delivered to the defendant on account of mutual consent, therefore, it will be presumed to be in due course of law.

[8]. Secondly, the articles so removed from the place were found to be retained in order as per photos Ex.P-3 and Ex.P-4

on record and these articles were not found to be scattered. The articles were found to be kept in sequence. Of course, Police has no authority to get the compromise effected between the parties, but as per the trial Court, evidence on record revealed that compromise was not effected due to any force or coercion exerted by the Police, rather the parties entered into compromise outside and then went to Police, which can be gathered from the statement of ASI Roop Chand. Since as per plaintiff's version his son Sandeep Kumar had figured at every crucial time, but he was not examined for the reason best known to the plaintiff. The complaint filed before the National Human Rights Commission was also dismissed for non-prosecution. Of course, the complaint is pending before the Court of Chief Judicial Magistrate at the stage of preliminary evidence. On the aforesaid grounds, the suit was dismissed by the Civil Judge (Jr. Divn.) Bathinda vide judgment and decree dated 19.07.2014.

[9]. Learned counsel for the petitioner contended that the perusal of compromise itself revealed that the same was verified by ASI Roop Chand, Police Station Kotwali, Bathinda on 22.10.2009. Statement of SI Roop Chand, (the then ASI) while appearing as DW-3 was assailed to argue that the witness in his cross-examination has admitted that he did not remember that

on which date the defendant had given application and he did not bring the application with him, rather he stated that he did not have any application. He admitted that the application was received and the same was entered in the register and number was marked to that application. He could not tell the number of application, nor could tell that whether any application was entered and registered in the register or not? He did not bring any receipt, register and stated that the dispute between the parties was in respect of arrears of rent. He further stated that the defendant demanded the rent and the same was not paid by the plaintiff. He admitted that the dispute was with regard to payment of rent between the parties and the same was beyond the jurisdiction of the police as the Courts have only jurisdiction to entertain such issue. Witness also admitted that he did not send any summon to call the petitioner, nor any other employee was sent to the plaintiff. However, factum of illegal picking up petitioner and his son was denied. The witness also admitted that the compromise was not written by him, nor he could spell out as to who had written the same. He did not know whether the said compromise was written in the Police Station or somewhere else. He did not recall whether parties or witnesses to the compromise had signed in his presence or not? Money was also not paid in his presence.

[10]. By relying upon the statement of DW-3, learned counsel for the petitioner emphasized that the compromise itself was shown to be verified by ASI Roop Chand/DW-3 on 22.10.2009 and if, this is co-related with his statement, the overt act of ASI Roop Chand could come to fore. Learned counsel also relied upon examination-in-chief of the defendant wherein he admitted in para No.2 of the written statement that plaintiff was running a barber shop in the tenanted premises. In the month of October, 2009 the shop was vacated after executing a writing of compromise which was executed on 22.10.2009 by ASI Roop Chand in the presence of parties and the witnesses present therein including number of relatives of plaintiff also. The original compromise was retained by the DW-3. The parties were called by Investigating Officer/DW-3 on 22.10.2009 in the Police Station where the plaintiff accepted the amount of Rs.75,000/- from the defendant. The Sub-Inspector Roop Chand (the then ASI) reduced into writing the compromise between the parties and obtained signatures of both sides. Relatives and other persons were also present along with the parties.

[11]. Thirdly, learned counsel for the petitioner relied upon the statement of Jayant Sharma, who appeared as DW-1. The witness had admitted that he was not related to the defendant.

Son-in-law of the defendant was also in the business of water filter i.e. business done by the witness. The agreement was scribed in the Police Station. The witness did not remember the name of the scribe, nor could tell whether scribe was police personnel or the civilian. Apart from the witness, plaintiff and defendant and one Surinder Kuamr were present. No other policeman was present at the time of negotiation. The compromise was entered into between the parties in the night and was effected in the morning. Payment of Rs.75,000/- was made. The name of son-in-law of the defendant was disclosed to be Sunil Sharma, who was also known by the name of Rana.

[12]. On the aforesaid premise, learned counsel for the petitioner argued that eviction of the plaintiff was a forcible eviction and the possession was liable to be restored in terms of Section 6 of the Specific Relief Act. Learned counsel on the strength of **Adapa Tatarao vs. Chamantula Mahalakshmi, 2007 AIR (A.P.) 44; Sanjay Kumar Pandey and others vs. Gulbahar Sheikh and others, 2004(3) RCR (Civil) 466** and **Vaneeta Khanna vs. Rajeev Gupta, 2008(8) AD (Delhi) 662** contended that in a suit for recovery of possession only thing is to be seen whether he was dispossessed from the suit property other than the due procedure prescribed by a law. The proceedings under Section 6 of the Act are summary in nature

and are limited to find out factum of possession within six months of the institution of suit ignoring question of title.

[13]. As against the aforesaid argument, learned counsel for the respondent argued that the compromise itself did not reveal whether it was scribed by Roop Chand or someone else. Once the compromise was brought before the Police Authority, pursuant to the complaint, it was required to be verified by the Police. The signature of Rood Chand appeared only in the proceedings of verification. The compromise was not proved to be scribed by Roop Chand as claimed by the petitioner. Even the statement of Jayant Sharma DW-1 was to the effect that he did not know as to who had scribed the compromise, nor he could tell whether the compromise was scribed by the policeman or a civilian. Only colouration was in para No.2 of the examination-in-chief of the defendant, wherein it was mentioned that a writing in respect of compromise was executed by way of compromise on 22.10.2009 by Roop Chand, ASI in the presence of the parties. The signature of Roop Chand at the end of the compromise is a gesture of verification which could have been construed by the defendant to be an execution of compromise, but the document in its entirety has to be appraised. The perusal of the document of the compromise nowhere pointed out that it was scribed by Roop Chand in any

manner.

[14]. The signature of Roop Chand appeared at the end of the compromise where it was recorded that the same was verified by the Roop Chand. Scribing of document and verifying the same are two distinct activities. In the compromise it was nowhere shown as to who had scribed the same. The statement of DW-1 Jayant Sharma would be in consonance with the true interpretation of compromise, wherein he could not spell out as to who had scribed the compromise in question. Signatures of many persons of the compromise would be in consonance with the plea of the parties that number of persons attested the compromise as token of confirmation including Mukesh Kumar, Municipal Councilor, who signed the same along with his seal. Compromise was executed outside the Police Station and was given effect by way of verification by ASI Roop Chand.

[15]. During the pendency of the present case, a Civil Misc. No.5036-CII of 2016 was moved by one Rajesh Kumar son of Charanjit Pal for impleading him to be necessary party in the present case on the ground that he is in possession of the premises since 28.10.2009. The applicant seems to be subsequent tenant inducted by the landlord-defendant in the premises after getting the same vacated from the plaintiff. In

view of nature of litigation, the applicant Rajesh Kumar son of Charanjit Pal can be permitted to address arguments in the case. Since interest of the applicant is directly involved on being inducted in the suit premises w.e.f. 28.10.2009, therefore, applicant-Rajesh Kumar is ordered to be impleaded as respondent No.2 in the present revision petition.

[16]. I have given my thoughtful consideration to the controversy.

[17]. Evidently, there are version and cross-version between the parties with regard to the genuineness of the compromise effected between them, that ultimately entailed in eviction of the plaintiff from the suit premises. A finding of fact has been recorded by the trial Court based on evidence adduced by the parties. The perusal of compromise itself is not suggestive of the fact that the same was scribed by Roop Chand, who has signed the compromise as a gesture of verification that too at the end of the compromise. Earlier part of the compromise shows that the same was witnessed by so many persons including Mukesh Kumar, Municipal Councilor along with his seal. Even though the compromise was verified in the Police Station, the same was not proved to have been written in the Police Station as was proved from the independent witness

examined as DW-1 i.e. Jayant Sharma. The witness could not spell out as to whether the compromise was the handiwork of any policeman or otherwise.

[18]. The statement of the defendant was an explanatory note. The verification done by Roop Chand at the end of the compromise could have been perceived by the defendant to say that the same was scribed by Roop Chand. In my considered opinion, para No.2 in the examination-in-chief of the defendant was an explanatory note and the same in itself was not sufficient to hold that it was written by Roop Chand. Even, though it was mentioned in the statement that Sub-Inspector reduced into writing a compromise between the parties that could have been in the backdrop of the fact that many persons signed the compromise in front of Police in Police Station which was a gesture to be noticed that the parties having entered into compromise outside the Police Station ventured to corroborate the same in the presence of Policemen. In any event, this fact itself cannot disclose the stand of the defendant particularly when Roop Chand DW-3 himself had denied the factum of writing a compromise in his statement. His statement as DW-3 would make it clear that the compromise was not written by him. Infraction in the evidence of the defendant is not of that intensity which would dislodge the case of the landlord. Alleged

dispossession took place in the month of October 2009, since then third party interest is involved in respect of suit premises.

[19]. Even otherwise, the case involved disputed questions of fact. The compromise under Sections 6 and 38 of the Act are distinct in nature. The disputed questions of fact cannot be appreciated in summary proceedings like the one involved herein, wherein it is limited to find out the question of possession within a period of six months. The remedy of a person, who is unsuccessful in a suit under Section 6 of the Act is to file a regular suit based on title. Remedy of revision is available only for a limited question i.e. by way of exception that too based on well settled parameters under Section 115 CPC.

[20]. The observations made by the Hon'ble Apex Court in **Sanjay Kumar Pandey and others'** case (supra) would suffice to hold good in the present scenario. In the cited case the Hon'ble Apex Court set aside the order of the High Court vide which the decision of the trial Court was reversed on the basis of oral statements of the witnesses by taking extract of depositions of the witnesses for forming an opinion with regard to possession in favour of one of the party before six months from the date of institution of the suit. The parameters of Section 115 CPC were considered so as to exercise the revisional

jurisdiction calling for reversal of the decision of the High Court in a suit under Section 6 of the Act.

[21]. In view of aforesaid, I have noticed that both the parties have led evidence on compromise. The evidence of the plaintiff was not sufficient to presume that his dispossession/eviction was on account of forcible dispossession by the defendant. Plaintiff wanted to take benefit of case of the defendant witnesses to extract something in his favour by way of getting statements explained. I am afraid this is not the scope of the revision petition as the plaintiff has to stand on the strength of his own case.

[22]. In view of above discussion and in considered opinion of this Court, the present revision petition is liable to be dismissed being bereft of merits.

[23]. Ordered accordingly.

September 29, 2016

Atik

**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether reportable

Yes / No