

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 265

Civil Revision No.2282 of 2016 (O & M)
Date of Decision: February 02, 2017

Yashpal

..... PETITIONER

VERSUS

M/s Allied Properties

..... RESPONDENT

...

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

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PRESENT: - Mr. S.S. Siao, Advocate, for the petitioner.

Mr. Anuj Rana, Advocate, for the respondent.

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Jaspal Singh, J

1. Through the instant petition preferred under Article 227 of the Constitution of India, petitioner – Yashpal has sought setting aside of order dated January 27, 2016 passed by the Additional District Judge, Chandigarh, whereby the mesne profit @ ₹ 3,000/- per month have been awarded for the use and occupation of the demised premises.

2. The facts giving rise to the instant petition are that respondent - M/s Allied Properties had filed a suit for mandatory injunction directing the petitioner to hand over the vacant possession of the demised property, alleging that petitioner – defendant was a licensee in the demised premises. The said suit was decreed ex parte vide judgment & decree dated March 03, 2010. For setting aside the

for aforesaid judgment & decree, petitioner moved an application under

Order 9 Rule 13 CPC read with Section 151 CPC which stands dismissed by the Civil Judge (Junior Division), Chandigarh vide order dated April 06, 2015. Petitioner preferred an appeal against aforesaid order dated April 06, 2015 which is pending disposal in the court of Additional District Judge, Chandigarh. During the pendency of aforesaid appeal, respondent – M/s Allied Properties filed an application seeking direction to the petitioner – appellant Yashpal to pay mesne profit @ 7,000/- per month for the use and occupation of demised premises from the date of filing of suit i.e. February 22, 2008 onwards. The said application has been disposed of vide impugned order dated January 27, 2016 passed by the Additional District Judge, Chandigarh, whereby he has been directed to pay mesne profits of the demised premises @ ₹ 3,000/- per month. Feeling aggrieved against the aforesaid order, petitioner – plaintiff has approached this Court.

3. While assailing impugned order January 27, 2016, it has been vehemently argued by learned counsel for the petitioner that the same is based upon conjectures and surmises. Learned Additional District Judge has failed to appreciate that appeal against dismissal of an application under Order 9 Rule 13 CPC is already subjudice and direction to pay mesne profits @ 3,000/- per month is clearly pre-empting the decision of the case. The Additional District Judge, while passing the impugned order, has also failed to appreciate that suit for mandatory injunction seeking possession of the property was not maintainable at the instance of respondent since the suit filed by predecessor-in-interest of the property had already been withdrawn.

Moreover, no liberty to file a fresh suit on the same cause of action had been granted. Thus, the suit would stand barred under Order 2 Rule 2 CPC as well as under Section 11 of the CPC i.e. doctrine of resjudicata. Not only this, even the lower Appellate Court has also failed to appreciate that there had been no termination of license (assuming the petitioner to be a licensee) by the respondent – plaintiff.

4. Learned counsel further submitted that basis of ownership of the respondent – plaintiff i.e. sale deed dated January 28, 2008 in respect of the house in question, is already under challenge in suit titled ‘Jai Karan Vs. Ashok Kumar’ and ‘Smt. Usha (through LRs) Vs. M/ Allied Properties’ pending adjudication in civil court at Chandigarh. As far as filing of suit for eviction against petitioner by the respondent – plaintiff is concerned, the said suit itself was not maintainable *inter alia* for the reasons that petitioner never chosen to abstain from the proceedings or the civil suit. Infact, he had engaged Ms. Manjit Kaur, Advocate, to defend the civil suit but she did not appear and ultimately the petitioner was proceeded against ex parte. Subsequently, the suit was also decreed regarding which an appeal is already subjudice before the Additional District Judge, Chandigarh. Moreover, the petitioner was never a licensee in any manner under the respondent – plaintiff. Thus, question of termination of the license does not arise at all. Infact, when the respondent – plaintiff has no legal right to file an eviction petition, he is not entitled to recover the rent or mesne profits.

5. While concluding his arguments, it has been submitted by learned counsel for the petitioner that taking the case from any of the angles, the impugned order is not sustainable in the eyes of law and deserves to be set aside.

6. This Court has given a deep thought to the submissions made by the learned counsel but does not find any legal or factual force therein.

7. It is an undisputed fact that petitioner in possession of the demised premises and the suit filed by the respondent – plaintiff has already been decreed ex parte vide judgment & decree dated March 03, 2010. No doubt, for setting aside the above referred ex parte judgment & decree, an application under Order 9 Rule 13 CPC was filed by the petitioner – defendant but that application also stood dismissed on merits vide order dated May 11, 2015 passed by the Civil Judge (Junior Division), Chandigarh. Though, an appeal against said order dated May 11, 2015 is still pending disposal in the court of Additional District Judge, Chandigarh. The mere fact that matter is subjudice by way of an appeal against the order whereby an application under Order 9 Rule 13 CPC was dismissed, does not *ipso facto* mean that the court is estopped/ barred from assessing the mesne profits and further giving direction to the occupant of the property in suit to make the payment thereof. Similarly, pendency of the suit whereby a challenge has been made to the sale deed dated January 28, 2008, also *ipso facto* does not mean that it has lost its evidentiary value. Moreover, nothing has come on record that petitioner is the owner of the property but one thing is

evident that he is in possession of the disputed premises. Thus, this Court is of the considered view that Order dated January 27, 2016 does not suffer from any infirmity or illegality, rather the same is absolutely in consonance with the settled canons of law. The instant petition is nothing but an abuse of the process of law.

8. In the light of what has been discussed above, this Court finds no merit in the instant petition and the same is dismissed.

February 02, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No