

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

Civil Revision No.3307 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. By virtue of the instant petition, preferred under Article 227 of the Constitution of India, petitioner has sought setting aside/ modification of order dated March 29, 2016 (Annexure P-3) passed by the District Judge, Chandigarh in Civil Appeal No.73 of 2016 titled 'Yashpal vs. M/s Allied Properties' to the extent of deletion of the condition imposed upon the petitioner to furnish security. Vide the impugned order, execution of judgment & decree dated January 27, 2016 passed by the Civil Judge (Junior Division), Chandigarh **has been ordered to be stayed** subject to furnishing security to the extent of one and half times of the decretal amount within one month.

2. Undisputeably, the respondent – plaintiff filed a civil suit No.4003 of May 11, 2010 against the petitioner for recovery of an amount to

the tune of ₹ 3,42,720/- for the use and occupation of the disputed premises. Since the petitioner – defendant did not appear before the trial court, an ex parte judgment & decree dated January 27, 2016 was passed. However, an application under Order 9 Rule 13 CPC was filed on August 17, 2010 which was dismissed by the Civil Judge (Junior Division), Chandigarh, vide order dated April 06, 2015. Aggrieved against the said order, petitioner preferred an appeal before the learned District Judge, Chandigarh, in which, impugned order dated March 29, 2016 (Annexure P-3) has been passed.

3. While assailing the impugned order, it has been submitted by learned counsel for the petitioner that the direction to furnish security to the extent of one and half times of the decretal amount is without any legal or factual justification, especially in the circumstances that the matter is still subjudice and no finding has been recorded with regard to the ownership of the property in question. Moreover, the petitioner is not in possession of the premises in dispute as a licensee, rather he is in possession as a co-owner. Even otherwise also, the order granting mesne profits @ 3,000/- per month is already under challenge and an appeal in respect thereof is pending disposal before this Court, in which, order dated January 27, 2016 has already been stayed vide Order dated March 31, 2016 (Annexure P-4). Infact, learned District Judge, while passing the impugned order has failed to appreciate that the main dispute regarding possession is already pending by way of two civil suits titled 'Jai Karan vs. Ashok Kumar' and 'Smt. Usha vs. M/s Allied Properties'. Thus, the condition to furnish security to the extent of one and half times of the decretal amount is not justifiable and the same deserves to be deleted and the impugned order requires modification accordingly.

4. This Court has given a deep thought to the aforesaid submissions made by learned counsel for the petitioner but does not find any merit therein.

5. Undisputably, ex parte judgment & decree dated March 03, 2010 has not so far been set aside by any of the courts. Rather, an application moved by the petitioner for setting aside the ex parte judgment & decree has been dismissed by the Civil Judge (Junior Division), Chandigarh, vide order dated April 06, 2015. However, an appeal is pending before the District Judge, Chandigarh. As far as the grant of stay vide order dated March 31, 2016 (Annexure P-4) passed by this Court in another petition is concerned, it is judicially noticeable that said petition has already been dismissed by this Court vide separate judgment of even date. Thus, imposition of any condition for grant of stay vide impugned order dated March 29, 2016 is neither harsh nor prejudicial to the petitioner, rather, it ought to have been imposed just to safeguard the right and interests of respondent – plaintiff in whose favour ex parte judgment & decree dated March 03, 2010 still subsists. Thus, this Court does not find any perversity or illegality in the impugned order. As such, instant petition stands dismissed.

February 02, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No