

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

Civil Revision No.334 of 2015

Date of Decision: January 24, 2017

Sharanjit Singh

...Petitioner

Versus

Kuldeep Kaur & Anr.

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Amit Dhawan, Advocate,
for the petitioner.

Mr.S.K.Bawa, Advocate,
for respondent No.1.

RAMESHWAR SINGH MALIK, J.(Oral)

Present revision petition is directed against the order dated 29.11.2014 (Annexure P-4) whereby, the learned Executing Court dismissed the objections raised by judgment debtor-petitioner.

Notice of motion was issued.

Heard learned counsel for the parties.

It is a matter of record and not in dispute that petitioner and one Smt.Gursharan Kaur, wife of Surinder Singh, were co-defendants with the petitioner. Respondent-Smt.Kuldeep Kaur/plaintiff filed the suit for possession and for recovery of ₹1,48,000/- (One lac and forty eight thousand only), towards damages for illegal and unauthorized use and occupation of the suit property and also ₹4,000/-(four thousand only) per month as mesne profits from the date of filing of the suit till recovery of

possession.

The suit filed by the plaintiff/respondent came to be decreed by the learned trial Court, vide its judgment and decree dated 13.06.2008. Said judgment and decree has attained finality against the petitioner as he had already lost upto this Court. Plaintiff/respondent filed execution of the above-said decree. During pendency of the execution application moved by the respondent, petitioner filed objections, contending therein that since he had already handed over possession of the suit property to his co-defendant, namely, Smt.Gursharan Kaur, he was not liable to pay the amount on account of mesne profits. However, said objection raised by the defendant No.1/petitioner was overruled by the learned Executing Court. He was held still to be in possession of the suit property. Accordingly, his objections were dismissed, vide impugned order dated 29.11.2014. Hence this revision petition at the hands of the judgment debtor/defendant No.1.

Having heard learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that the petitioner has no case either on facts or in law. He has been trying to delay the proceedings under one pretext or the other, including the flimsy and technical grounds. He failed to show any relevant material either to the learned Executing Court or even to this Court, which may even remotely suggest that he, as matter of fact, handed over the vacant possession of the suit property to his co-

defendant Smt.Gursharan Kaur.

Having said that this Court feels no hesitation to conclude that learned Executing Court was well within its jurisdiction to pass the impugned order and the same deserves to be upheld. The only argument raised by learned counsel for the petitioner regarding handing over possession, was based on the order dated 03.02.2012 (Annexure P-7) but the same has not been found correct, for the reason that actual physical possession has not been said to have been handed over to Smt.Gursharan Kaur. The petitioner, being judgment debtor and the decree having attained finality against him, was duty bound to hand over the vacant possession to the decree holder/respondent and not to his co-defendant.

As noticed herein above, the petitioner has been making every possible effort, including misusing the process of law to avoid execution of the decree. However, since learned counsel for the respondent/decreed holder has conceded this fact situation that during pendency of the execution application, possession has been handed over by the petitioner to the decree holder, the only issue remains is that of recovery of mesne profits against the petitioner.

Be that as it may, petitioner shall be bound to pay the decretal amount towards mesne profits to the decree holder, strictly in accordance with the decree dated 13.06.2008 because it was he, who drew income out of the suit property.

In this view of the matter, learned Executing Court committed no error of law, while passing the impugned order and the

same deserves to be upheld, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered opinion that since the impugned order has not been found suffering from any patent illegality or perversity, the same deserves to be upheld. Instant revision petition has been found wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, present revision petition stands dismissed, however, with no order as to costs.

January 24, 2017
seema

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No