

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

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**CR No.4302 of 2016(O&M)
Date of decision: 07.02.2017**

Nand Lal (deceased) th. LR & anotherPetitioners

Versus

Jinender Kumar Jain & another ...Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.Ajay Jain, Advocate, for the petitioners.

Mr.Rose Gupta, Advocate, for the respondents.

G.S. SANDHAWALIA, J. (Oral)

Petitioner-tenants challenge the order dated 04.07.2016 (Annexure P3) whereby warrants of possession were issued for execution of order dated 15.03.2016, passed by the Appellate Authority. Similarly, the application for recalling of the said warrants, was dismissed on 06.07.2016 (Annexure P5) which is also subject matter of challenge.

The reasoning given by the Executing Court for dismissing the application was that the conditional order dated 15.03.2016 (Annexure P1) had been violated, inasmuch as the amount of Rs.25,000/-, which was supposed to be paid as arrears of rent were to be deposited within a period of one week. Similarly, mesne profits from 01.01.2016 which were to be paid, had not been done and therefore, the said order of the Appellate Authority, whereby a compromise had been entered into between the parties on an earlier occasion, arising out of the eviction order dated 03.02.2016 whereby the petitioner-tenant was to vacate the premises by 31.12.2019.

The said order, on the face of it, does not seem to be justified.

It is not disputed that a sum of Rs.25,000/- was deposited in the account of

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the landlord on 25.03.2016. He had no such objection to the arrears of rent deposited and thereafter, had filed the application on 10.05.2016 (Annexure P2), alleging that the tenants had not deposited the mesne profits in the account of the decree holder from 01.01.2016 @ Rs.600/- per month. A perusal of the execution application would go on to show that the landlord had not, at any point, suggested that he was aggrieved against the late deposit of Rs.25,000/-, which was supposed to be deposited by 22.03.2016, as per the terms of the compromise.

Counsel for the petitioners has pointed out that the demand draft was prepared on 21st and there were intervening holidays and therefore, there was delay in the deposit.

Even otherwise, once the landlord himself was not aggrieved against that, the observations of the Executing Court, on that aspect, was uncalled for that there was non-compliance of the order qua late deposit of arrear of rent.

On the other issue of late deposit of the mesne profits from 01.01.2016, a perusal of the order dated 15.03.2016 (Annexure P1) would go on to show that eviction was liable to be ordered in case of default of 3 consecutive deposits of the mesne profits. The operative part of order reads as under:

“In view of the above statement Appeal is allowed with directions to the appellants to deposit arrears of Rs.25,000/- within a week, to pay Mesne Profit @ Rs.600/- per month w.e.f. 01.01.2016 in Account No. 0203000100308667 of Shri Jinender Kumar maintained with Punjab National Bank, Main

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Branch, Sirsa Road, Hisar and to vacate the premises by 31.12.2019. In case the appellants do not deposit Mesne Profit consecutively for 3 months or failed to vacate the premises by 31.12.2019 the respondent/landlord will be entitled to take possession immediately in accordance with law. No costs. Copy of the order with Trial Court record be sent. After due compliance file be consigned to record room.”

It is not disputed that though on 13.05.2016, the first instalment of Rs.1800/- was deposited, which is 3 days after the execution application had been filed and similarly, in order to avoid the ejectment and to comply with the terms of the compromise, the petitioner-tenant had also deposited the balance of mesne profits of 3 months on 22.05.2016, to complete the payments till the month of June, for the year 2016.

In such circumstances, the orders passed by the Executing court, not recalling the order for issuance of warrant of possession, are not justified and the same are, accordingly, quashed. In view of the above discussion, this Court is of the opinion that there is no further cause of action left with the respondent-landlord to pursue the execution petition and the same is, accordingly, dismissed. It will always be open to the landlord to file a fresh application in case there is any default regarding the payment of the mesne profits for 3 consecutive months.

Revision petition stands allowed, in the above-said terms.

February 7th, 2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No