

238

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

**Civil Revision No.5064 of 2016 (O&M)
Date of Decision: 19.09.2017**

MANJEET KAUR

.....Petitioner

Vs

GOBIND KUMAR

....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Arpandeeep Narula, Advocate
for the petitioner.

None for the respondent.

RAJ MOHAN SINGH, J. (Oral)

[1]. On 06.12.2016, after issuance of notice of motion on 09.08.2016, respondent was sought to be served by means of substituted service in terms of Order 5 Rule 20 CPC by way of necessary publication. Registry has reported that the publication has already been done in the newspaper on 21.01.2017, however despite substituted service, none has appeared on behalf of the respondent. Therefore, respondent is proceeded against *ex parte*.

[2]. Petitioner has assailed the order dated 16.05.2016

passed by the Civil Judge (Jr. Divn.) Ludhiana whereby application filed by her under Section 152 read with Section 151 CPC for modification of the judgment and decree dated 19.01.2016 passed by the Civil Judge (Jr. Divn.) Ludhiana was dismissed.

[3]. Brief facts are that plaintiff filed a suit for recovery of arrears of rent as well as for recovery of possession of shop No.3, measuring 17.77 sq. yards situated at Nihalpura Market, Village Mouja Threekay Abadi Sunder Nagar, Opposite Mediway Hospital, Ferozepur Road, Ludhiana. The head note of the plaint was to the following effect:-

“Suit for recovery of arrears of rent Rs.4,15,000/- (Rupees Four Lakh Fifteen Thousand Only) w.e.f. September 2008 till date @ Rs.5000 (Rupees Five Thousand Only) per month, along with interest at the rate of 18% per annum till the disposal of the instant suit and as a future interest and further for the recovery of possession of shop No.3, which is measuring 17.77 square yards situated at Nihalpura Market, Village Mouja Threekay Abadi Sunder Nagar, Opposite Mediway Hospital, Ferozepur Road, Ludhiana, Punjab and which is part of building situated in land bearing Khewat No.45, Khatoni No.46 Khasra No.101 (4-15-0) situated at village Threekay Abadi Sunder Nagar Opposite Mediway Hospital, Ferozepur Road, Ludhiana, Punjab, according to jamabandi for the year 2007-2008 which has been shown as red in the plan attached and bonded as under:-

East:- Shop in occupation of Binder (Tenant) property of plaintiff.

West:- Shop in occupation of decent property (Tenant) property of plaintiff.

North:- Road

South:- Property of plaintiff

AND/OR

Any other relief which deems fit to be granted to the plaintiff by this Hon'ble Court.

On the basis of oral and documentary evidence.”

[4]. The plaintiff also affixed requisite court fee for both the claims after making necessary pleadings in terms of para No.11 of the plaint which was to the following effect:-

“11. That value of the suit for the purposes of court fee and jurisdiction for the relief of Recovery of arrears of rent Rs.4,15,000/- (Rupees Four Lakh Fifteen Thousand Only) along with interest at the rate of 18% per annum till the disposal of the instant suit on which a court fee of Rs.13,690/- is payable. The value of the suit for the purposes of court fees and jurisdiction for the relief of recovery of possession is fixed at Rs.56,864/- on which a court fee of Rs.2770/- is payable. Thus in all a total court of Rs.16200/- has been paid on the plaint.”

[5]. Ultimately prayer clause to the following effect was made in the suit:-

“It is, therefore, respectfully prayed that a Decree for the relief of recovery of arrears of rent Rs.4,15,000/-

(Rupees Four Lakh Fifteen Thousand Only) w.e.f. September 2008 till date @ Rs.5000 (Rupees Five Thousand Only) per month, along with interest at the rate of 18% per annum till the disposal of the instant suit and as a future interest and further for the recovery of possession of shop No.3, which is measuring 17.77 square yards situated at Nihalpura Market, Village Mouja Threekay Abadi Sunder Nagar, Opposte Mediway Hospital, Ferozepur Road, Ludhiana, Punjab and which is part of building situated in land bearing Khewat No.45, Khatoni No.46 Khasra No.101 (4-15-0) situated at village Threekay Abadi Sunder Nagar Opposite Mediway Hospital, Ferozepur Road, Ludhiana, Punjab, according to jamabandi for the year 2007-2008 which has been shown as red in the plan attached and bonded as under:-

East:- Shop in occupation of Binder (Tenant) property of plaintiff.

West:- Shop in occupation of Decent Property (Tenant) property of plaintiff.

North:- Road

South:- Property of plaintiff

may kindly be decreed as per oral and documentary evidence be passed in favour of the Plaintiff and against the Defendant with costs. The Plaintiff may also be granted any other relief found available to him in addition to or in alternative.”

[6]. Learned counsel for the petitioner submitted that necessary evidence was led by the plaintiff for both the claims, but the trial Court inadvertently and due to some clerical

omission omitted to grant decree for possession. Only a decree for recovery of Rs.4,15,000/- with costs and interest was awarded vide judgment and decree dated 19.01.2016. The operative part of the decree was to the following effect:-

“This suit is coming on this 19th January, 2016 for final disposal before me Isha Goel, Civil Judge (Jr. Divn.), Ludhiana, in the presence of Sh. Deepak Makhija, Adv. for the plaintiff and defendant is exparte.

In this case, suit of the plaintiff is partially decreed exparte for recovery of Rs.4,15,000/- with costs. So far as, the rate of interest is concerned, interest so claimed by the plaintiff is exorbitant than the actual rate of interest as prevalent in the market. However, I deem it fit to award interest @ 9% P.A. on principal amount from the date of amount due viz. September 2008 till the date of passing this decree and thereafter future interest @ 6% P.A. on principal amount till its actual realization.”

[7]. Thereafter plaintiff/petitioner filed an application under Section 152 read with Section 151 CPC for correction of the judgment and decree dated 19.01.2016. The said application was rejected by the trial Court on the premise that the relief of possession as claimed by the plaintiff was not mentioned in the suit, therefore, the plaintiff could have challenged the judgment and decree of the trial Court in an appropriate forum. The operative part of the order dated 16.05.2016 passed by the Civil Judge (Jr. Divn.) Ludhiana is to the following effect:-

“In the instant case, the original file has been pursued. The relief of possession as claimed by the counsel for the plaintiff has not been mentioned meaning thereby it is deemed to be declined. However, if the applicant is aggrieved with the judgment passed by this Court, then the applicant/plaintiff has other efficacious remedy. In view of above discussion and clear law, the application stands dismissed.

File be consigned to the record room, Complete in all aspects.”

[8]. I have heard learned counsel for the petitioner.

[9]. Evidently, the trial Court has proceeded with the application on the presumption that no relief of possession was claimed by the plaintiff in the suit and in the event of non-mentioning of the relief in the judgment and decree that amounted to deemed dismissal of the prayer, even if existed on record.

[10]. Perusal of the plaint in terms of headnote and prayer clause is suggestive of the fact that relief of possession was specifically pleaded in para no.11 of the suit, even requisite court fees to the tune of Rs.2770/- was affixed on the value of the suit for the purposes of jurisdiction for the relief of recovery of possession @ Rs.56,864/- besides affixation of court fees for the relief of recovery of arrears of rent.

[11]. In view of above, I find that the trial Court has

misdirected itself while recording that there was no prayer and dismissed the application under Section 151/152 CPC. At this stage, without meaning anything on ultimate merits of the case, I deem it appropriate to direct the trial Court to revisit the order on the basis of plaint and pass a fresh order in accordance with law.

[12]. Consequently, the impugned order dated 16.05.2016 passed by the trial Court is set aside. Petition stands disposed of with the aforesaid observations.

September 19, 2017

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No