

CR No. 5381 of 2016(O&M)

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

**CR No. 5381 of 2016(O&M)
Date of Decision: 6.4.2017**

Dev Narian Sharma

.....Petitioner

Vs.

Manoj Kumar

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Sanjeev Sharma, Advocate
for the petitioner.

RAMESHWAR SINGH MALIK J. (ORAL)

Instant revision petition, at the hands of plaintiff, filed under Article 227 of the Constitution of India, is directed against the judgment dated 29.1.2015 passed by the learned Additional District Judge, dismissing the appeal of the petitioner as not maintainable, against the impugned judgment and decree dated 1.9.2014 (Annexure P-1) of the learned trial court, whereby his suit for permanent injunction was dismissed.

Brief facts of the case, as noticed by learned trial court in para 2 of its impugned judgment, are that plaintiff was migrate of Bihar and residing in house No. 2028/B-10, Baldev Nagar Vishwakarma Nagar, Ambala City, since 2011. Copy of ration card, voter list of the plaintiff and his family were attached. The plaintiff was 70% permanent physically disabled as per Medical/disability certificate issued by the Civil Surgeon

CR No. 5381 of 2016(O&M)

Ambala, vide certificate No. 164 dated 27.7.2005. During January 2006, the landlord of the house along with one Manoj Kumar-defendant came to the plaintiff and instructed to pay the rent to defendant Manoj Kumar-your new landlord. The plaintiff was a peace loving person and residing in the said room with his wife and was regularly paying rent since 2001.

On 5.8.2006 at about 12:30 AM in the night, when plaintiff was sleeping in his rented house, suddenly, he heard that someone was knocking at the door heavily and calling the plaintiff. The voice was of some unknown persons so the plaintiff did not open the door and replied them to come in the morning. The unknown persons stated abusing and beating the door heavily. They all pressed and forced the plaintiff to open the door. To the utter surprise of the plaintiff, he heard a voice as call 'Dev Narain open the door, it was, Manoj Kumar your landlord, open the door, do not worry or afraid. The plaintiff was compelled and obligatory to open the door of the room after hearing the voice of Manoj Kumar, whom the plaintiff knew personally and understand/recognize the voice of Manoj Kumar-defendant No.2. When the plaintiff opened the door, 5-6 persons headed by Manoj Kumar entered the room of the plaintiff and started giving slaps on the face of the plaintiff, as he fell down, others kicked the plaintiff. Mr. Raju, next house neighbour, gave danda blow on the back of the plaintiff. On this, defendant and others started throwing household articles and directed other to throw the domestic articles and got possession of the room. The landlord showed the plaintiff a weapon like a small karpan and forced the plaintiff to sign some blank papers immediately and got signed some blank papers at the edge of that weapon and started looting the jewelry and cash from the box. The defendant and their companions threw away all the domestic articles from the room in possession of the plaintiff and pushed the plaintiff out from

CR No. 5381 of 2016(O&M)

the room by beating mercilessly, causing threat not to come there again otherwise he would be killed.

The plaintiff immediately approached Shri Mahavir Singh, In-charge Police Chowki Baldev Nagar, Ambala City and narrated the whole incident. The plaintiff was directed by Mahavir Singh to report the matter to the authorities at Phone No. 100 (police help) which was made thrice but in vain. It was dawn, the plaintiff approached police station Baldev Nagar. After hearing the matter, two constables visited the spot (rented house), lying locked and saw the situation. The domestic goods were lying scattered there on the spot. The plaintiff approached In-charge Police Post Baldev Nagar, Police Station Baldev Nagar On 6.8.2006 and finding no other alternative, approached the Superintendent of Police with an application on 7.8.2006 and got no justice from any corner. Lastly, on 10.8.2006 at about 10:00 AM, defendant came in Auto bearing No. HR-37-A-7752 and took away all the goods lying there with the help of two police persons and threatened the plaintiff not to come to that spot.

Having been served in the suit, defendant put appearance and filed his written statement, raising more than one preliminary objections. On completion of pleadings of parties, learned trial court framed the following issues:-

1. Whether the plaintiff is entitled to suit for possession of residential rented house as alleged? OPP
2. Whether the suit of the plaintiff is not maintainable in the present form? OPD
3. Relief.

In order to prove his case, plaintiff produced his oral as well as documentary evidence. After hearing learned counsel for the parties and

CR No. 5381 of 2016(O&M)

going through the evidence brought on record by the plaintiff, learned trial court came to be conclusion that plaintiff has miserably failed to prove his case. He did not plead anything, whatsoever, referring to any material fact that he was an indigent person. Petitioner being the plaintiff, onus was on him to prove his case, however, he did not do so, for the reasons best known to him. Accordingly, his suit was dismissed vide impugned judgment and decree dated 1.9.2014. Feeling aggrieved, petitioner filed his first appeal, which also came to be dismissed by the learned first appellate court, as not maintainable, vide judgment dated 29.1.2015, because plaintiff filed the suit under Section 6 of the Specific Relief Act, 1963 ('the Act' for short). Hence this revision petition.

Heard learned counsel for the petitioner.

It is the settled principle of law that plaintiff has to stand on his own legs. He was supposed to prove his pleaded case by leading cogent and convincing evidence. Suit of the plaintiff cannot be decreed on the alleged weakness of the case of defendant. In the absence of any relevant and cogent evidence, suit of the plaintiff cannot be decreed just at his asking. This is what has happened in the present case. Neither the plaintiff-petitioner has taken appropriate pleadings, nor produced relevant evidence on record, so as to enable the learned trial court to decree his suit. Having said that, this Court feels no hesitation to conclude that the learned trial court was well within its jurisdiction to pass the impugned judgment and the same deserves to be upheld.

Similarly, learned Additional District Judge rightly appreciated the factual as well as legal aspect of the matter, while passing his impugned judgment. It is not in dispute that plaintiff who was claiming himself to be in possession of the rented accommodation, filed a suit for specific

CR No. 5381 of 2016(O&M)

performance under Section 6 of the Act against the defendant, who had allegedly dispossessed him illegally and forcibly. However, since the plaintiff has miserably failed to prove his case by bringing on record relevant evidence, he was bound to fail and accordingly, his suit was dismissed by the learned trial court. In such a situation, appeal against the impugned judgment and decree of the learned trial court, was not maintainable before the learned first appellate court in view of the provisions of law contained in Section 6 (3) of the Act. Under these undisputed peculiar facts and circumstances of the case, it can be safely concluded that neither the learned trial court nor the learned first appellate court committed any error of law, while passing their respective impugned judgments and the same deserve to be upheld.

The view that has been taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court:-

Ram Dass Vs. Salim Ahmed and Anr. 1998 (9) SCC 719 (SC)

Fakira and another Vs. Mittul Mongia and others, 2016 (62) RCR (civil) 501 (P&H)

Smt. Javitri Devi Vs. Sanay Kumar Wasist and others, 2017 (1) Law Herald 388 (P&H)

A bare reading of the impugned judgment passed by the learned trial court would show that present one is a case of no evidence. In this view of the matter, the learned trial court was left with no other option except to dismiss the suit of the plaintiff-petitioner. Thus, the impugned judgment passed by the learned trial court deserves to be upheld, for this reason also.

During the course of hearing, learned counsel for the petitioner could not point out any patent illegality or perversity in the impugned

CR No. 5381 of 2016(O&M)

judgments passed by the learned learned courts below, warranting interference at the hands of this court, while exercising its revisional jurisdiction under Article 227 of the Constitution of India.

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 view that the present revision petition is 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, instant civil revision petition stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

6.4.2017
Ak Sharma

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No