

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

CR No.8091 of 2015 (O&M)

Date of decision: 09.11.2017

Sirajuddin

...Petitioner

Versus

Market Committee, Panipat and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Harkesh Manuja, Advocate for the petitioner.

Mr. Naveen Daryal, Advocate for the respondents.

REKHA MITTAL, J. (Oral)

The present petition directs challenge against order dated 22.09.2015 passed by the Civil Judge (Jr. Div.), Panipat whereby application filed by the petitioner for restoration of the suit dismissed in default on 30.09.2010 has been rejected.

Counsel for the petitioner has submitted that the petitioner filed a suit for permanent injunction restraining the defendants from auctioning shop No.4, Machhli Market, Panipat purported to be leased out to the petitioner/plaintiff by the defendants on 07.10.1998 and further dispossessing the petitioner from the shop forcibly and illegally. It has been argued that the petitioner filed the application for restoration of suit in January, 2011 and the same has been dismissed by the trial Court primarily on the ground of limitation in absence of an application for condonation of

delay of about four months. It is argued with vehemence that a serious prejudice shall be caused to the petitioner in case the suit is not restored and decided on merits when otherwise the contesting respondents can well be compensated with costs for delay, if any, attributable to the petitioner.

Counsel representing the respondents has supported the impugned order with the submission that the petitioner is in arrears of rent/market fee running into more than Rs.50 lakh and he has not paid any amount either during pendency of the suit or the petition before this Court except that he sent two demand drafts dated 26.10.2017 of Rs.1 lakh and dated 06.11.2017 of Rs.1.2 lakh, after passing of order dated 26.09.2017 by this Court.

Counsel for the petitioner, in reply, has fairly conceded that subsequent to passing of order dated 26.09.2017 by this Court, petitioner sent the aforesaid drafts to the respondents. However, it has been disputed that the petitioner is in arrears of rent/market fee to the tune of more than Rs.50 lakh, though he is liable to pay the amount as per the rate alleged in the plaint.

The Trial Court in the concluding para of the impugned order has noticed that the suit was instituted in 2003 and earlier dismissed in default vide order dated 10.04.2004. The case was again dismissed in default on 30.09.2010. The petitioner had admitted that neither he appeared in the Court after 26.11.2009 nor enquired about his case from his counsel till 25.01.2011. It also becomes an undisputed position of the case that

petitioner is in arrears of rent/market fee for number of years though there is dispute between the parties with regard to outstanding liability. There is no tangible explanation furnished by the petitioner to explain delay of about four months in filing the application for restoration of the suit.

Taking into consideration conduct of the petitioner who is occupying property belonging to Market Committee, Panipat without discharging his obligation created even under the agreement dated 7th October, 1998, petitioner is not entitled to indulgence of this Court on equitable consideration. In this view of the matter, I find myself unable to accept submissions of the petitioner that order impugned warrants intervention in exercise of supervisory jurisdiction of this Court.

For the foregoing reasons, the petition fails and is accordingly dismissed leaving the parties to bear their own costs. However, any observations made hereinbefore shall not cause any prejudice to right of the petitioner to challenge his liability to pay rent/market fee in appropriate proceedings.

09.11.2017

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No