

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

224

CR No.8000 of 2014 (O&M)

Decided on : 08.03.2017

Suresh Kumar Jain

... Petitioner

Versus

Shree Atma Nand Jain Sabha and another

.. Respondents

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

Present:- Mr.Sherry K.Singla, Advocate for the petitioner.
Mr.Amit Kohar, Advocate for the respondents.

G.S.Sandhawalia, J. (Oral)

Challenge in the present petition under Article 227 of the Constitution of India, by the tenant, is for setting aside of the orders dated 06.10.2014 and 03.11.2014 (Annexures P/3 and P/5, respectively) passed by the Rent Controller, Malerkotla.

By virtue of the said orders, initially, a sum of Rs.32,524/- was assessed as provisional rent, which was to be payable by the tenant. On account of the fact that on the due date fixed, the amount was not tendered, instead of passing eviction order, warrants of possession were issued by the Rent Controller on 03.11.2014 (Annexure P/5). The petitioner-tenant has approached this Court, thus challenging the said orders. However, prior to that, on 25.11.2014, the possession of the house in dispute had been taken by the respondent-landlord.

While issuing notice of motion on 26.11.2014, this Court had ordered the parties to maintain status quo regarding the possession of the demised premises and the respondent had also been directed not to carry out

any type of alteration or deal with the premises till the disposal of the petition. Thereafter, on 27.07.2015, directions were issued that the tenant should be put back into possession and the said order reads as under:-

“The petitioner is the tenant, who has lost possession in a way which, according to him, is duplicitous of the landlord who obtained an assessment of provisional rent and was able to secure an order of warrant of possession to be issued without the court first passing an order of eviction. I will not take it to be very serious error although surely it was an error in procedure for a court to be ordering a warrant of possession even without ordering eviction in the first place. The tenant had a right to canvass the correctness of the order of provisional assessment in a higher forum and since the court had passed a warrant of possession, he had approached this court and also preferred an appeal to the appellate court against the assessment of provisional rent. It appears that the landlord has taken possession in the meanwhile and has withdrawn the rent petition. A non-payment of provisional rent determined can only allow for a summary ejectment and would not allow for the landlord the liberty of walking away from the proceedings and bringing a terminus quo for a tenant to urge that the assessment made was wrong.

The delivery of possession taken by the landlord even before the conclusion of proceedings relating to the determination of provisional rent in my view is inappropriate and I order restitution of the property to be rendered. I direct the landlord to return the property to the tenant within a week. If the order is not complied with, the tenant is at liberty to approach this court to apply for contempt. I exercise my supervisory jurisdiction for the appellate court and direct the proceedings before the appellate court to stay till the order is complied with.

To report compliance of the directions, adjourned to 17.08.2015.

It is not disputed that the tenant has now been put back in possession. It is also pertinent to mention that after the tenant had approached this Court, the landlord withdrew the eviction petition on 22.12.2014. The tenant thereafter, filed an appeal, which is pending before the appellate authority in January, 2015. The appeal is also directed against two of the orders, which have been impugned here-in also apart from order dated 22.12.2014, whereby the execution petition was withdrawn.

Thus, this Court is of the opinion that, once the matter is

already pending before the appellate authority and it would not be appropriate to pass any order since prejudice would be caused to either of the sides and they would lose a right of appeal, as such. Counsel for the landlord, however, submits that the tenant is continuing in possession of the demised premises without payment of rent taking advantage of the proceedings and pendency of the appeal. He therefore, prays that the appeal be decided, expeditiously.

The said request is genuine on the face of it. Accordingly, the present revision petition is disposed of, with the observation that the appellate authority shall take into consideration the grouse of the appellant-tenant before it, in the appeal pending before it, and take appropriate decision on the same and pass necessary orders in accordance with law. The said exercise will be completed by 31.05.2017.

[G.S.Sandhawalia]
Judge

08.03.2017

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Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No