

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No.8362 of 2016 (O&M)

Date of decision: 20.04.2017

M/s Dua Traders & another

....Petitioners

Versus

Ram Dulari & others

...Respondents

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

Present: Mr.Vikram Singh, Advocate, for the petitioners.

Mr.Ajaivir Singh, Advocate, for the respondents.

G.S. SANDHAWALIA, J. (Oral)

CM-8407-CII-2017

Application for placing on record the zimni order passed by the Lower Court, reflecting payment of mesne profits, as Annexure P5 (Colly.) is allowed, in view of the averments made in the application, duly supported by an affidavit. Same are taken on record. Office to tag the same at appropriate place.

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The present revision petition has been filed by the petitioner-tenant against the order dated 03.12.2016 (Annexure P3), whereby police help was provided by the Executing Court, in view of the fact that the mesne profits had not been deposited, to avail the protection of possession, as directed by this Court on 22.09.2015, during the pendency of CR-1373-2007.

Mr.Ajaivir Singh, Advocate, has put in appearance on behalf of the respondent-landlady and has produced the certified copy of the order dated 29.03.2017, whereby the execution filed by the landlady was dismissed as fully satisfied on account of possession having been delivered.

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Thus, the present petition is liable to be dismissed by imposing exemplary costs, for repeatedly approaching this Court and wasting the precious time of the Court. The order impugned is dated 03.12.2016, whereby directions were issued by the Executing Court allowing the application of the landlady for seeking police help and breaking open the lock, on account of the report received from the Bailiff. The said directions came to be necessitated on account of the fact that a conditional order was passed by this Court on 22.09.2015, whereby mesne profits were to be deposited @ Rs.8000/- per month, during the pendency of CR-1373-2007. The same was to be done within 6 weeks from the said date and the tenants were to continue paying the future mesne profits by the 7th day of each month and in the event of a single default, the landlady was free to execute the order of eviction. It is, in such circumstances, the execution application was filed on 21.12.2015.

CM-7525-CII-2016 & CM-11455-CII-2016 in CR-1373-2007 came to be filed, seeking review of the order dated 22.09.2015, after 6 ½ months. The said applications were dismissed on 22.07.2016, by imposing Rs.20,000/- as costs, to be deposited with the District Legal Services Authority, Jalandhar, by a Co-ordinate Bench. The operative part of the order reads as under:

“Thus, it is writ large that the applicant-tenant was fully conscious of the order dated 22.09.2015, and the contents thereof, right from its inception. And, for, it was passed with the consent of the parties, applicant-tenant had no occasion to question it. Therefore, the only and the inevitable conclusion that one could reach is; the purpose to move this application was/is to evade compliance of the order, dated 22.09.2015, for,

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the six weeks time stipulated in the order dated 22.09.2015, to deposit the arrears of mesne profits has since expired. The application seriously lacks; merits as also the bona fides.

And, being devoid of merit, the same is dismissed with costs of ₹ 20,000/- to be deposited with the District Legal Services Authority, Jalandhar.”

Thereafter, another application bearing CM-14426-CII-2016 in CR-1373-2007, for extension of time, was filed and that the arrears of the mesne profits be kept deposited with the Trial Court and may be released to the party which ultimately succeeds in the revision petition. The said application was dismissed on 26.08.2016. The operative part of the said order reads as under:

“That apart, there has been constant change of counsel on the part of the applicants-petitioners as is apparent from the order dated 22.09.2015, the counsel who had appeared for the petitioners is different from the one who had appeared when the order dated 22.07.2016 was passed. In the present application, again the counsel is different. This clearly shows that the petitioners are moving applications after applications which are not only lacking in *bona fides* but appears to be an effort to delay the compliance of the order dated 22.09.2015. But that in any case, would not be a consideration which would weigh against the applicant for the plea as is being sought to be taken, but when the order dismissing the review application is seen and that too with the observations made therein, which clearly indicate that the Court did not intend to further extend time for deposit of arrears, the prayer made in this application cannot be accepted.

In view of the above, the present application, in the considered opinion of this Court, is without any merit and lacks *bona fides* and, therefore, stands dismissed.”

The said order was challenged in Special Leave to Appeal (C) No.26423 of 2016 before the Apex Court, which was dismissed on

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08.09.2016. The present revision petition, thus, came to be filed in December, 2016, challenging the order dated 03.12.2016 on the ground that there was a review pending before the Apex Court.

A perusal of the objections which were filed before the Executing Court (Annexure P2) would also go on to show that nothing was shown that any amount was deposited, which has now been brought on record that certain deposits have been made on 06.07.2016, 22.07.2016, 10.10.2016 and 10.11.2016, in compliance with the orders passed by this Court, in CM-8407-CII-2017. An effort has, thus, been made to give an impression as if the amounts have been deposited on time and therefore, the Executing Court was in error to direct breaking open of the locks.

A perusal of the objection petition application also goes on to show that nothing was brought to the knowledge of the Executing Court about the said deposits.

Counsel for the respondents has, now, placed on record the order dated 29.03.2017. From a perusal of the same, it would be clear that warrants of possession were issued and applications were filed for review of the orders issuing warrants of possession. Accordingly, the execution application was dismissed as having been satisfied, since possession had already been delivered on 10.03.2017, as stated by Mr.Ajaivir Singh, on instructions from the respondents. The order dated 29.03.2017 reads as under:

“DH produced order dated 24.03.2017 passed by Hon'ble High Court vide which he was directed to show the proof of payment of mesne profit. Counsel for the DH suffered a statement that he do

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not want to file reply to the application for review of the order directing issuance of warrant of possession. DH has already taken the possession of the demised premises. Heard on the application for review of order directing issuance of warrant of possession in favour of Ram Dulari for possession of demised premises. Application is not sustainable, in view of detailed orders passed by this Court on 31.08.2016, 03.12.2016 and 01.02.2017. No sustainable ground is made out for reviewing the order for issuance of warrant of possession. Even execution has not been stayed by the Hon'ble High Court. Application for review of the order directing the issuance of warrant of possession in favour of Ram Dulari for possession of demised premises is dismissed. DH has already taken the possession of demised premises. Execution is dismissed as fully satisfied. File be consigned to record-room."

Thus, it is apparent from the above cumulative history that the petitioners failed to comply with the orders dated 22.09.2015, passed by this Court. The application for extension of time was dismissed with exemplary costs of Rs.20,000/-. The said order has not been attached with the present revision petition. Subsequent application was also dismissed on 26.08.2016 and an attempt was made to get relief from the Apex Court, which was also unsuccessful. An effort has, thus, been made to hold on to the possession without deposit of the mesne profits, as had been directed and an averment has been made in the application for extension of time to deposit the mesne profits, which had been rejected, in view of the fact that the order dated 22.09.2015 was passed in the presence of both the parties.

Thus, it is apparent that all delaying tactics have been adopted by the petitioners and harassment has been caused to the other side and as noticed, inspite of the fact that the possession had already

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been delivered on 10.03.2017, this fact was not brought to the notice of this Court. The Executing Court also noticed the said fact in the order dated 29.03.2017. Thereafter, the matter was also adjourned on 28.03.2017 and 03.04.2017 and today. It is only on account of the counsel for the respondent-landlady being present today that this Court has been informed that possession has already been handed-over and the present revision petition has become infructuous. In spite of this fact having taken place wayback on 10.03.2017, the matter has been kept hanging fire without disclosing the necessary facts to this Court.

Resultantly, this Court is of the opinion that it is a case where in spite of a sum of Rs.5000/- being imposed as costs on an earlier occasion, on 03.04.2017, which has been duly deposited, an additional amount of Rs.50,000/- shall be paid by the petitioners as costs, for wasting precious judicial time, for satisfying the ego of the petitioners and causing unnecessary harassment to the other side. Out of the deposited amount, Rs.25,000/- will be receivable by the respondents. The said amount will be deposited with the District Legal Services Authority, Jalandhar, within a period of 4 weeks from today. In case it is not done, the District Magistrate, Jalandhar shall initiate proceedings against the petitioners for recovery of the said amount. The said officer shall also submit a report that the said amount has been duly deposited.

20.04.2017

Sailesh

**(G.S. SANDHAWALIA)
JUDGE**

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*