

CWP No.18842 of 2017

[1]

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

**CWP No.18842 of 2017
Date of decision:23.08.2017**

Dalwinder Kumar

...Petitioner

Versus

State of Punjab and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Ajay Singla, Advocate,
for the petitioner.

Rakesh Kumar Jain, J. (Oral)

This petition is filed for seeking quashing of the order dated 22.11.2016 passed by the District Judge, Hoshiarpur, whereby application/complaint filed by the petitioner against the bailiffs (respondents no.3 and 4 herein) has been dismissed.

The facts given to me in the Court are that one Brahmjit was the owner of the property in question who entered into an agreement dated 07.09.2007 to sell the property in question to one Surjit Kaur. Surjit Kaur filed a suit for specific performance which was decreed in her favour on 30.11.2012. She filed an application for execution of the said decree asking for registration of sale deed and delivery of possession. The petitioner filed objections in the execution but were dismissed on 20.08.2016 against which he filed appeal which is still pending. Thereafter, the sale deed was registered in favour of Surjit Kaur and the Court appointed the bailiffs for delivery of possession. The petitioner also filed Civil Suit No.470 of 2016 titled as "Dalwinder Kumar vs. Brahmjit" for specific performance of the agreement to sell dated 25.08.2007 with application for temporary injunction, under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908, in which Brahmjit was restrained to interfere in

his possession vide order dated 25.07.2016.

The case of the petitioner is that it was written in warrants of possession that *“if any stay order is provided at the spot, then warrant of possession shall be returned to the Court forthwith without going into the correctness of the stay order along with the photocopy of the said stay order”*.

It is submitted that despite the aforesaid direction in the warrant of possession, the bailiffs delivered the possession to Surjit Kaur. The petitioner then made a complaint against the bailiffs to the District Judge, Hoshiarpur. The said complaint is stated to have been filed/dismissed and, thus, the present petition has been filed for seeking a direction to take necessary action against the bailiffs.

I have heard learned counsel for the petitioner and examined the available record with his able assistance.

In this case, it appears that the petitioner has been watching the proceedings but did not join the suit filed by Surjit Kaur against Brahmjit for specific performance. Otherwise, the petitioner, as stated, had the prior agreement to sell in his favour dated 25.08.2007 and should have joined the proceedings as he also resides in the same locality. In any case, the suit filed by Surjit Kaur was decreed on 30.11.2012, the execution was filed and the petitioner filed objections to the execution which were dismissed. In the meantime, he filed Civil Suit No.470 of 2016 for seeking specific performance of his contract. However, the injunction granted to the petitioner in that suit was only against Brahmjit, meaning thereby only Brahmjit was restrained from interfering in possession of the petitioner and not Surjit Kaur and if the petitioner wanted, he could have arrayed Surjit Kaur as a party in the said suit for specific performance because by that time the decree had already been

passed in favour of Surjit Kuar and this fact was very much within the knowledge of the petitioner as he had already filed objections in the execution filed by Surjit Kaur but for the reasons best known to the petitioner, who has been playing hide and seek with the Court, he did not implead Surjit Kaur as a party and became successful in obtaining the stay order from the Civil Court in his own suit, though against Brahmjit only.

Besides the fact that the petitioner is a victim of his own smartness, the complaint made by him has been inquired into by the District and Sessions Judge, Hoshiarpur through the Chief Judicial Magistrate, Hoshiarpur, who has reported that there is no fault of the employees (bailiffs/respondents no.3 and 4) who had discharged their official function/duty entrusted to them. The said report is not under challenge at all.

In view of the above, I do not find any merit in the present petition and the same is hereby dismissed.

August 23, 2017
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(Rakesh Kumar Jain)
Judge

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