

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

C.R. No.264 of 2016 (O&M)

Date of Decision.26.03.2018

Ramphal and another

.....Petitioners

Vs

Santosh Bhagana and another

.....Respondents

2. C.R. No.854 of 2016

Santosh Bhagana

.....Petitioner

Vs

Ramphal and others

.....Respondents

3. C.R. No.958 of 2018

Santosh Bhagana

.....Petitioner

Vs

Ramphal and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ajay Jain, Advocate
for the petitioner in CR No.264 of 2016 and
for the respondents in CR No.854 of 2016.

Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Raghav Gulati, Advocate
for the petitioner in CR No.958 of 2018 and 854 of 2016 and
for the respondents in C.R. No.264 of 2016.

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AMIT RAWAL J.

This order of mine shall dispose of three revision petitions.

Civil Revision No.264 of 2016 at the instance of the petitioners-plaintiffs is
against the order dated 23.12.2015 (Annexure P-8) whereby the application
seeking police help for implementation of the order dated 2.9.2015
(Annexure P-4) has been dismissed. C.R. No.958 of 2018 at the instance of

the petitioner-defendant No.1, is against the order dated 2.9.2015 (Annexure

P-6) and 21.12.2017 (Annexure P-16) whereby the interim application under Order 39 Rule 1 and 2 CPC filed by the respondents-plaintiffs has been allowed and upheld by the lower Appellate Court. C.R. No.854 of 2016 at the instance of the petitioner-defendant No.1 has been preferred against the order dated 23.12.2015 (Annexure P-10) whereby the application dated 13.10.2015 seeking amendment of the written statement by adding certain paragraphs on account of occurrence of subsequent event has been dismissed. The outcome of all the three revision petitions hinges upon the decision of C.R. No.264 of 2016, therefore, the facts are enumerated from the same.

The petitioners-plaintiffs have approached this Court by challenging the order dated 23.12.2015 on the ground that the petitioners-plaintiffs on 09.12.2011 instituted the suit for symbolic possession by way of specific performance of agreement to sell dated 18.11.2010 in respect of house bearing No.1111 measuring 160 sq. yards situated at Urban Estate II, Hisar (hereinafter called the suit property) by directing the defendant No.1 to execute and register the sale deed in favour of plaintiff No.2 namely Virender Kumar, petitioner No.2 herein with consequential relief of permanent injunction seeking restraint order against defendant No.1 from forcible interference and dispossession, much less, alienation of the property. Along with the aforementioned suit, an interim application under Order 39 Rule 1 and 2 CPC was also filed. It was averred that the agreement to sell was for a sum of ₹25 lacs and the entire sale consideration in the presence of witnesses had been paid to the defendant No.1. It is in that background, the possession was handed over. In July, 2011, plaintiff No.1 requested defendant No.1 to register the sale deed in favour of plaintiff

No.2 but the same was not executed. Plaintiff No.2 in consultation with defendant No.1 fixed the date for execution and registration of the sale deed as 21.11.2011 and in order to facilitate the registration of the sale deed purchased stamp paper of ₹1,95,300/- and also deposited a sum of ₹15,000/- as registration fee in the treasury and the sale deed was also drafted at the instructions of defendant No.1 but defendant No.1 did not appear before the Sub Registrar and slipped away, leaving the petitioner-plaintiff No.2 in lurch. The plaintiff No.1 continued in possession of the property and thereafter he assigned his right under the agreement in favour of plaintiff No.2 in June, 2011. The electricity charges were also being paid by plaintiff No.2, much less, the water and sewerage charges. An interim prayer was also made for restraining the defendant No.1 from alienating the property in dispute or dis-possessing the plaintiff No.2 from the house till final order.

Mr. Ajay Jain, learned counsel appearing on behalf of the petitioners-plaintiffs submitted that defendant No.1 is very clever and cunning lady. In order to wriggle out from the agreement, she involved the petitioners in a criminal case and got registered false FIR bearing No.803 dated 9.12.2011 under Sections 365/420/448/506/120B IPC registered with Police Station Civil Lines, Hisar by hiding her husband Virender Singh. The police investigated the matter and found the complaint to be false and recommended cancellation of the same. A case of cheating under Sections 420/406 IPC was also registered against defendant No.1 vide FIR bearing No.42 dated 17.1.2012. Even the anticipatory bail filed by her was also dismissed by the Sessions Court, though this Court had granted the bail and facing trial. The defendant No.1 in utter disregard of the stay order dated 2.09.2015 forcibly occupied the house after breaking open its lock on

10.10.2015. The matter was reported to the police but no action was taken owing to the fact that the matter was sub judice before this Court.

Since the defendant had already admitted the possession of the petitioners, an application dated 13.11.2015 (Annexure P-5) for implementation of the order dated 2.9.2015 by providing police help was submitted before the trial Court. The aforementioned application was contested by filing reply (Annexure P-6) wherein it was stated that the possession of the house was not taken forcibly but was handed over by the HUDA authorities by coining a story that since the HUDA officials had initiated the resumption proceedings and when the suit property was resumed, the defendant No.1 filed an appeal, deposited the penalty and got possession back from HUDA, which fact has been admitted in the information received under the Right to Information Act that the resumption order was cancelled and the possession of the house in question was resumed. The aforementioned application has been dismissed by the trial Court on the ground that an application dated 13.10.2015 had been submitted by the defendant No.1 under Order 6 Rule 17 CPC seeking amendment of the written statement, by incorporating paragraph 8-A in the written statement, wherein subsequent event of handing over the possession of the house by the HUDA authorities, was sought to be incorporated.

He submitted that possession of the plaintiffs had been admitted by the defendant in paragraph 7 of the written statement wherein it was stated that possession of the plaintiffs was in the capacity of tenant but not on the basis of alleged agreement to sell. It was also stated that the defendant is entitled to get possession of the suit property as per law but the trial Court had erroneously rejected the application on the following points:-

- (i) The petitioners have remedy of moving application under Order 39 Rule 2-A CPC.
- (ii) The application for amendment at the instance of the defendant No.1 for incorporation of paragraph 8-A clarifying the subsequent event of handing over possession had been pending and therefore, the police help could not be provided. In fact, the petitioner was relegated to file the separate suit under Section 6 of the Specific Relief Act.

The Court below had further erred in holding that the question of possession can be decided only after considering the evidence of both side but the fact of the matter is that the order of the court had been violated with impunity. In support of his contentions, he relied upon the judgment of Hon'ble Supreme Court in *Meera Chauhan Vs. Harsh Bishnoi and another 2007(1) RCR (Civil) 597* and also order of this Court dated 21.09.2015 rendered in Civil Revision No.5962 of 2015, which had attained finality upto Hon'ble Supreme Court to contend that the police assistance can always be granted by the Court as and when parties violate the order of injunction or stay order by using the inherent powers.

Per contra, Dr. Anmol Rattan Sidhu, learned Senior Counsel assisted by Mr. Raghav Gulati appearing for the respondents submitted that the finding rendered by the trial Court is perfectly legal and justified and does not call for interference as the remedy in favour of the petitioners was to file independent suit for possession. It is yet to be determined whether the defendant No.1 had taken possession forcibly or was handed over by the HUDA authorities after resumption proceedings were over. He drew

attention of this Court to Annexure P-6 attached along with civil misc. application bearing No.2662-CII of 2016 i.e. statements of Babu Ram, Assistant Estate Officer, HUDA and Virender son of Mohinder Singh in a proceeding initiated in FIR No.42 dated 17.01.2012 titled as “State Vs. Santosh Bhagana”, which is pending adjudication to submit that witness of HUDA deposed that on the spot, possession of house No.1111, Urban Estate-II, Hisar is of Santosh Bhagana, who had been continuously in possession for a period of one year. Even the plaintiff in those proceedings in the statement recorded on 29.01.2016 admitted the same, thus, the finding of the Court below that adjudication of the possession would be subject matter of evidence is perfectly justified as matter in controversy cannot be decided in the slip-shot manner by rendering assistance of police.

He also drew attention of this Court to Annexure R-7 i.e. the information received from the SPIO-cum-Estate Officer, HUDA, Hisar by Santosh Bhagana, defendant No.1 to the effect that as and when any plot is to be resumed by the authority then possession stands with the authority, thus, urges this Court for upholding the order under challenge.

In the revision petition bearing No.854 of 2016 seeking amendment of the written statement, Mr. Sidhu submitted that the amendment sought to be incorporated is a subsequent event and is very essential and necessary, failing which the whole purpose of adjudication to the *lis* between the parties would be frustrated. The Court below has gravely erred in declining the amendment on the premise that the case pertains only to the alleged agreement to sell, therefore, the parties to the *lis* can always lead evidence qua possession but ignored the fact that the pleaded case of the petitioner-defendant No.1 was that the alleged

agreement to sell was null and void, fabricated and therefore, no credence could be granted to the same. The evidence has to be in consonance with the pleadings. In case the petitioner-defendant No.1 leads evidence qua possession, the same would be objected to at relevant point of time being beyond pleadings. The suit is still at initial stage, therefore, the amendment can be allowed to be incorporated.

Per contra, Mr. Ajay Jain, learned counsel appearing on behalf of the respondents-plaintiffs in CR No.854 of 2016 submitted that a willful disregard or contempt committed by defendant No.1 cannot be permitted to be perpetuated with impunity. Defendant No.1 had cleverly dispossessed the plaintiffs-respondents and immediately moved the application for incorporating paragraph 8-A in the written statement by coining a story of handing over possession by the HUDA authorities on culmination of the resumption proceedings of the property in dispute.

In the third revision petition i.e. C.R. No.958 of 2018, injunction application has been allowed by the trial Court and upheld by the lower Appellate Court. Mr. Sidhu submitted that the orders of both the Courts below are contrary to the evidence on record, particularly, when subsequent event had taken place. The lower Appellate Court, thus, abdicated in not setting aside the order of the trial Court dated 2.9.2015 whereby the defendant was enjoined to dispossess, interfere, alienate the property in dispute. The ingredients of Order 39 Rule 1 and 2 CPC were conspicuously wanting, therefore, the application under Order 39 Rule 1 and 2 CPC was also liable to be dismissed. Rather, owing to the impugned order passed in Civil Revision bearing No.264 of 2016, the present revision petition is bound to be allowed, for, two contrary orders cannot be allowed

to continue or co-exist.

I have heard learned counsel for the parties and appraised the paper book. The first point/question to be determined by this Court is whether any occasion arose for the petitioners-plaintiffs to move an application for providing police assistance whereby the petitioners-plaintiffs had allegedly been dispossessed despite the interim order dated 2.9.2015. It was pleaded case of the respondent-defendant No.1 in para 7 of the originally filed unamended written statement that though the possession of the plaintiffs was not disputed but the same was not on the basis of agreement to sell. Paragraph 7 of the unamended written statement and operative part of the order dated 2.9.2015 read as under:-

“Para 7 of the unamended written statement.

(7). Para No.7 of the plaint is wrong as stated in this para. However possession of the plaintiffs are not disputed but not on the basis of the alleged agreement to sell. However, answering defendant is entitled to get back possession from them as per law. Had any agreement between the plaintiffs as alleged in this para then same is not binding upon the right of the answering defendant but same is denied for want of knowledge. The plaintiffs may kindly be directed to produce said agreement as agreed between them as stated in this para. However, plaintiffs and alleged witnesses agreed to pay all electricity charges and water charges when they took the house in question on rent from the answering defendant wherein they running a PG therefore, defendant No.2 has also issued notice to them in this regard. It is denied plaintiff No.2

is alone in possession over the house in question.

Order dated 2.9.2015

.....But at this stage, one thing is clear that plaintiff is possessing the suit property because there is clear admission in the written statement of the defendant that she has given the suit property to the plaintiff on Rent. Even if that statement is considered, it means that plaintiff is residing in the suit property as tenant. Therefore, there is prima facie sufficient evidence on record to infer that plaintiff is in the possession of the suit land.

10. Therefore, in view of the above discussion, this Court considered that possession of the plaintiff is prima facie established, therefore, this Court considered that there exist a prima facie in favour of the plaintiff and balance of convenience also lies on his side and he is going to suffer irreparable loss, if injunction is not granted. Therefore, defendant No.1 is restrained from alienating the house or dispossessing the plaintiff No.2 from the house till final order. Therefore, in view of the observation, present application stands allowed.

Nothing so contained in this order shall be deemed to be an expression of opinion of the court on the merits of the case.

*Announced
02.09.2015*

*sd/-
(Sanjay)
Civil Judge (JD) Hisar.”*

The pleaded case of the petitioners in the application providing

by breaking open the lock on 10.10.2015 whereas the application for amendment was submitted on 13.10.2015 and the application for providing police assistance was moved on 13.11.2015. Further question arises is whether, the finding of the trial Court relegating the petitioners to file the remedy under Section 6 of the Specific Relief Act is sustainable or not, or whether the question of possession would be question of evidence to be adjudicated at the stage of trial.

In my view, for determination of the violation of the interim order for the purpose of providing police assistance came to be debated upon before Hon'ble Supreme Court in **Meera Chouhan's case** (supra) wherein in para 17 and 18 which read as under, the Hon'ble Supreme Court held that whenever parties violate order of injunction or stay order or act in violation of the said order, the Court can, by exercising its inherent power, put back the parties in the same position as they stood prior to issuance of the injunction order or give appropriate direction to the police authority to render aid to the aggrieved parties for due and proper implementation of the orders passed in the suit and also order police protection for implementation of such order. Thus, the Court is not denuded of the power to order for restoration of possession to the party wronged:-

“17. At the same time, it is also well settled that when parties violate order of injunction or stay order or act in violation of the said order the Court can, by exercising its inherent power, put back the parties in the same position as they stood prior to issuance of the injunction order or give appropriate direction to the police authority to render aid to the aggrieved parties for the due and proper implementation of the orders passed in

the suit and also order police protection for implementation of such order.

18. It is also well settled that when in the event of utter violation of the injunction order, the party forcibly dispossesses the other, the Court can order restoration of possession to the party wronged.”

It is a matter of record that respondent-defendant No.1 originally in para 7 of the written statement admitted possession of the petitioners-plaintiffs in the capacity of tenant but not in pursuance of the agreement to sell but the fact of the matter is that possession was not denied.

It is also to be seen that in resumption proceedings, HUDA takes the physical possession or whether it is a symbolic possession. The conceded position on record is that though resumption proceedings had been initiated but ultimately culminated into imposition of penalty and restoration but the local legislature in their wisdom has promulgated an Act called the Haryana Public Premises Act, 1971 whereby remedy has been provided for seeking eviction of the unauthorized occupant in case of the finality of the resumption proceedings i.e. after complying with the provisions of Section 4 of the Act *ibid*. It has come on record that no such eviction proceedings under the Public Premises Act had been initiated for seeking eviction of the person in occupation of the disputed premises or property in dispute. The story projected in the reply to the application providing police assistance, in my view, was an after thought to cover up the alleged dispossession of the petitioners-plaintiffs. It has not seen in any of the proceedings so far where in resumption proceedings, the possession is taken. In my view, therefore, there was a willful and intentional

disobedience of the order dated 2.9.2015. In such a situation, the Court should come to the rescue of the party complaining of violation of the interim order. The trial Court ought to have exercised the jurisdiction under Section 151 of the Civil Procedure Code for issuing directions/orders instead of dismissing the application holding it to be question of adjudication at the time of trial, thus, questions posed above are answered in favour of the petitioner-plaintiff.

There is another aspect of the matter. The impugned order rejecting the police assistance is dated 23.12.2015 whereas the appeal preferred against the interim order dated 2.9.2015 had been decided on 21.12.2017 by the lower Appellate Court in favour of the petitioners. All these facts were in existence and knowledge of the parties and as well as the lower Appellate Court. The lower appellate Court while dismissing the appeal in para 9 of the order dated 21.12.2017 observed as under:-

“9. From examination of record in the light of aforesaid rival contentions it is crystal clear that plaintiffs filed suit for specific performance of agreement to sell dated 18.11.2010. Defendant No.1 had delivered possession of the house in question to plaintiff No.1 after taking entire sale consideration of Rs.25 lacs. Defendant No.1 had filed application for transfer of plot along with affidavit in July, 2011. Defendant No.2 granted permission in Aug. 2011. Defendant No.1 claimed that after resumption of plot defendant No.2 handed over possession to defendant No.1. No document regarding the same has been submitted. As per ratio of judgment in Rameshwar vs. Jot Ram's case (supra) rights of parties should

be determined on the date they come to Court. In view of above material facts and well settled principle of law arguments of learned counsel for appellant/defendant No.1 being devoid of merit are untenable. Impugned order does not suffer from any illegality or irregularity.”

Though the aforementioned order is subject to challenge in the revision petition but the fact of the matter is that opinion of the lower Appellate Court was that defendant No.1-petitioner in the miscellaneous appeal bearing No.28 of 2015 had not been able to place on record any document to show that defendant No.2 (HUDA) had handed over possession to defendant No.1. In fact, the possession of the parties has to be determined on the day when they approached the Court. In my view, it is a fit case where defendant No.1 has violated the order of the Court below and should not have relegated to avail the remedy under Section 6 of the Specific Relief Act but come to the rescue of the plaintiffs in providing police assistance in view of the ratio decidendi culled out by Hon'ble Supreme Court in **Meera Chouhan's case** (supra). If the impugned order is allowed to sustain, people will stop reposing faith in the judiciary and may take law in their hands for resolving the disputes and opt for rebellious attitude. The duty of the police is to maintain law and order and assure safety of the citizens but the present case is the highest degree of aberration, much less, repugnancy. The provisions of Section 151 of the Code of Civil Procedure Code can be put into action against the person or party to the suit, otherwise the defendant against whom the action sought to be taken, would resort to unethical method in handing over possession to the third party.

In view of the observations made above, I am of the view that

the impugned order dated 23.12.2015 is not sustainable in the eyes of law and hereby set aside. The Superintendent of Police, Hisar is directed to provide police help to the petitioners-plaintiffs in C.R. No.264 of 2016 to restore the possession of the petitioners and comply with the directions of this Court in letter and spirit. A copy of this order be communicated to the Superintendent of Police, Hisar for implementation. Resultantly, the civil revision bearing No.264 of 2016 stands allowed. Liberty is also granted to the petitioners-plaintiffs to move appropriate application in accordance with law in case the aforementioned directions are not complied with.

Now coming to the civil revision bearing No.854 of 2016 seeking amendment in the written statement by incorporating para 8-A, it would be apt to reproduce paragraph 8-A intended to be incorporated in the written statement:-

“8-A. That the defendant No.2 given the house started running a P.G. in the house in question. Upon that defendant No.1 passed order dated 19.2.2013 vide memo No.2080 and got possession of vacant house from the plaintiffs and their associates. After coming to know their fact defendant No.1 has filed an appeal before the administration HUDA Hisar against order dated 19.2.2013. However, plaintiff not filed any appeal in this regard. The administrator, HUDA, Hisar has accepted the appeal of the defendant No.1 subject to payment of penalty. Therefore, defendant No.1 has deposited penalty amount with the defendant No.2 and get back the possession of vacant house being owner. The defendant No.1 has been in possession of the house in question and tenancy

right whatsoever called if the plaintiff has been ceased/abundant by their act and conduct. However, plaintiff No.1 has also moved a false application against the defendant No.1 in police chowki U.E. II, Hisar. But, the concerned police found the defendant No.1 in possession and found no merit in that application. In this regard, a D.D. No.13 was registered on 19.2.2014.”

Once I have already held that there was violation of the ad interim order, the amendment sought to be incorporated would definitely change and alter the defence taken in the written statement, much less, tantamount to withdrawing of the admission. Such amendments cannot be permitted, therefore, I do not find any illegality and perversity in the order under challenge. The revision petition bearing No.854 of 2016 is dismissed.

Since I have already ordered for restoration of the possession of the premises in favour of the plaintiff owing to the violation of the injunction order, I do not find any fault with the orders under challenge in revision petition bearing No.958 of 2018 granting injunction in favour of the plaintiffs during the pendency of the suit for specific performance, particularly, when no documentary had been placed on record to, prima facie, establish that defendant No.1 had been put into possession by HUDA in lieu of culmination of the resumption order, thus, in my view the case of the respondents-plaintiffs in the aforementioned revision petition squarely fell within the parameters of Order 39 Rule 1 and 2 CPC viz; (i) prima facie case; (ii) balance of convenience and (iii) irreparable loss. The alleged subsequent event of having taken possession would not render the interim

order a nullity and inexecutable, for, it is yet to be proved on record whether the HUDA-defendant No.2 had handed over possession to the petitioner-defendant No.1, Santosh Bhagana.

In view of the aforementioned, I do not find any illegality and perversity in the orders under challenged. Resultantly, the revision petition bearing No.958 of 2018 is dismissed.

(AMIT RAWAL)
JUDGE

March 26, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable Yes