

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

**CR No.3197 of 2018(O&M)
Date of Decision:27.09.2018**

LakhmiPetitioner

Versus

Municipal Committee CheekaRespondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. C.S. Jattana, Advocate
for the petitioner.

Mr. Kuldeep Tiwari,Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. This revision petition has been preferred by the petitioner without assailing any order passed by the executing Court, rather the petitioner sought issuance of direction to the respondent not to interfere in the peaceful possession of the petitioner till execution of the decree dated 16.09.2006 in due course of law. Interim injunction was also sought, restraining the respondent from dispossessing the petitioner from the suit land during pendency of the petition. In a way, relief of permanent injunction was sought by the petitioner by filing the present

revision petition.

[2]. The material on record would show that the petitioner was evicted from the land in dispute in a suit for possession and mesne profit filed by the Municipal Committee, Cheeka through its representatives vide judgment and decree dated 16.09.2006.

The concluding part of the decree reads as under:-

“It is ordered that the suit of the plaintiff succeeds and the same is hereby decreed with costs. Defendants are hereby directed to hand over the possession of the suit land within 15 days from today. He is further directed to pay Rs.6000/- per acre per annum to the plaintiff as mesne profits with interest at the rate of 6% per annum from the date of filing of this suit till the possession handed over to the plaintiff. The decree of mesne profits in favour of the plaintiff is subject to deposition of Court fee within 15 days from today failing which the suit qua relief of mesne profits deemed to be dismissed.”

[3]. The aforesaid judgment and decree dated 16.09.2006 was upheld in appeal by the District Judge, Kaithal vide judgment and decree dated 15.11.2007 when the appeal filed by the defendant/petitioner was dismissed. RSA No.38 of 2008 was filed by the petitioner in the High Court and the same was also dismissed vide order dated 17.09.2009. Execution was filed by the decree holder/respondent.

[4]. At the time of issuance of notice of motion on

14.05.2018, learned counsel for the petitioner submitted that the execution filed by the decree holder was dismissed for non-prosecution and the application filed for restoration of the same was also dismissed by the Additional Civil Judge (Senior Division), Guhla on 14.08.2017. Appeal is pending before the District Judge, Kaithal and during pendency of the appeal, decree holder/respondent has issued notice for auction of the property. While issuing notice of motion, status quo regarding possession over the suit property was ordered to be maintained. Thereafter, on 27.07.2018, following order was passed by this Court:-

“It appears from the record that the execution filed by the respondent-decree holder was dismissed for non prosecution and the application for restoration of the same was also dismissed by the Additional Civil Judge (Sr.Divn.), Guhla. Appeal is pending before the court of District Judge, Kaithal. During pendency of the appeal, respondent-decree holder has issued notice for auction of the property. Qua the intended effort of the decree-holder to interfere in the suit property by way of raising wall, the petitioner has already filed a contempt petition i.e. C.O.CP No. 2077 of 2018.

Learned counsel for the petitioner has also alleged overt act on behalf of the Sub Divisional Officer (Civil), Guhla in the context of pending litigation in the High Court.

Learned counsel for the respondent seeks

short accommodation to address arguments.

Adjourned to 29.8.2018.

*Executive Officer of the Municipal Committee,
Cheeka shall remain present in Court on the adjourned
date.*

Interim order to continue.”

[5]. Reply filed by the respondent/decreed holder would show that in the execution, warrants of possession were issued and thereafter, possession was delivered in favour of the decreed holder. Warrant of possession dated 22.12.2009 and proceedings of possession dated 27.01.2010 would show that the possession was delivered after assessing compensation of standing crop and possession was delivered through Kuldeep Singh Malik, Secretary, Municipal Committee, Cheeka. Proceedings were recorded in *Rapat Roznamcha* Wakiati No.201 and the same was sent to Tehsildar Guhla.

[6]. It appears from the subsequent proceedings dated 07.05.2010 that the proceedings were returned in original to the office of Tehsildar with the request that the proceedings of warrant of possession have already been executed on 27.01.2010 on the spot. Necessary proceedings in original were returned to the Court of Additional Civil Judge (Senior Division), Guhla with the request that the report has already been sent vide endorsement No.32 dated 29.01.2010 and photocopy of

the same was again sent for further proceedings. The said endorsement was made by Naib Tehsildar, Guhla on 07.05.2010.

[7]. Perusal of the decree would show that the same could have been bifurcated in two parts, therefore, for further proceedings, the case was adjourned for 01.06.2010. In the appeal filed by the decree holder against the order dated 14.08.2017 passed by Additional Civil Judge (Senior Division), Guhla, it was specifically pleaded in para No.4 that only relief qua mesne profit survived as the possession of the land in question has already been taken through warrants of possession, therefore, dismissal of the execution in default for non-appearance of the decree holder would only involved relief of mesne profit against the judgment debtor.

[8]. Respondent by way of moving CM No.17927-CII of 2018 has placed on record all the necessary execution proceedings. For the reasons mentioned in the application, the same is allowed and the accompanying documents are taken on record.

[9]. It appears from the record that the petitioner has concealed the aforesaid documents which have been placed on record by the respondent along with aforesaid application.

[10]. Learned counsel for the respondent vehemently

submitted that the possession had already been taken by the respondent, but under the garb of order of status quo, petitioner has re-entered in the property. Respondent has been subjecting the land to auction in favour of prospective lessees. Register of agreement to lease or patta with reference to amount deposited by the lessees has been relied by the respondent in the documents attached with the application.

[11]. Keeping in view the aforesaid facts and circumstances of the case, I find that the petitioner has concealed material information from the Court and has not come to the Court with clean hands. Petitioner was ordered to be evicted by a Civil Court decree. The said decree has attained finality upto the stage of RSA No.38 of 2008. In execution of the decree passed by the trial Court, the petitioner was evicted and possession was delivered in favour of the respondent. At the time of dismissal of the execution in default and dismissal of the application for restoration of the same, only issue involved was in respect of mesne profit.

[12]. Since the appeal is pending before the Lower Appellate Court against the dismissal of the execution as well as application for restoration of the same, therefore, I deem it appropriate not to interfere in this revision petition as no such direction can be passed at random, particularly when it is found

that the petitioner has not come to the Court with clean hands.

[13]. In view of above, finding no merit in this revision petition, the same is dismissed.

September 27, 2018
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No