

**C.M.No.7226-CII-2018 in/and
CR No.4760 of 2017**

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

**C.M.No.7226-CII-2018 in/and
CR No.4760 of 2017
Date of decision:09.05.2018**

Neelam Bimal

... Petitioner

Vs.

Brig S.K.Chohan

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Akshay Jindal, Advocate
for the applicant/petitioner.

AMIT RAWAL J. (Oral)

Prayer in the application bearing No.7226-CII-2018 is for withdrawal of the present revision petition preferred against the impugned order dated 08.03.2017 (Annexure P-6), whereby, in a suit for ejectment filed by the respondent-plaintiff, defence of the petitioner-defendant on account of non payment of due rent, was struck off.

Mr. Akshay Jindal, learned counsel appearing on behalf of the applicant-petitioner submits that the aforementioned suit has resulted into passing of the judgment and decree dated 03.04.2018, wherein the petitioner-defendant was proceeded against ex parte. The appeal filed against the same is pending. A copy of the same has been produced in Court today which is taken on record. In view of such fact, he submits that he may be permitted to withdraw the present revision petition and amount of Rs.4 lacs lying deposited with the Registry of this Court as per order dated

24.07.2017 may be permitted to disburse to the petitioner.

Notice of the application to the non-applicant/respondent.

Mr. Sudhir Aggarwal, Advocate, who is present in Court accepts notice on behalf of non-applicant/respondent and does not dispute for withdrawal of present revision petition but objects qua disbursement of Rs.4 lac, for, he submits that decree is not only for possession but also for arrears of rent and mesne profit @ Rs.22,000/- from 1.4.2015 alongwith simple interest @ 12% per annum.

He further submits that there is no interim stay granted by the Lower Appellate Court and in pursuance to the decree, possession has been taken but the petitioner-defendant has not deposited the arrears of rent. It is an attempt to circumvent judgment and decree and urges this Court that an amount of Rs.4 lacs may be disbursed to the landlord as the arrears are more than Rs.8 lacs subject to the adjustment in execution application.

I have heard the learned for the parties and appraised the paper book. Since Mr. Sudhir Aggarwal, Advocate has not raised any objection vis-a-vis withdrawal of the petition, the same is permitted to be dismissed as withdrawn. It would be in the fitness of things to extract the order dated 24.07.2017 passed by this Court and as well as operative part of the judgment and decree dated 03.04.2018. The same read thus:-

Order dated 24.7.2017

“Cites Bimal Chand Jain Vs. Gopal Agarwal, 2981 AIR

(SC) 1657, Jai Bhagwan Vs. Chandra Mohan & Ors. 1995(2)

RCR(Rent) 373, Pritam Chand Vs. Manga Ram 2000(4) RCR

*(Civil) 266, Gurjit Singh Gill Vs. Major Paramjit Singh
Gothra 2004(2) RCJ 152 and Joginder Singh Vs. Karnail
Singh, 2002(1) RCR(Rent) 231.*

*Notice of motion, returnable for 22.08.2017, subject to the
petitioner's depositing Rs.4 lacs with the Registry of this Court.*

The amount shall not be disbursed till the rights are decided.

Process dasti as well.”

Relevant portion of judgment and decree dated 3.4.2018

*“21. It is proved that the defendant is a tenant in the first
floor of House No.789, Sector-17A, Gurgaon, on a monthly
rent of Rs.22,000/- per month and as in arrears of rent since
01.04.2015. Also, it is proved that tenancy stood terminated on
28.02.2015 and the defendant failed to vacate the premises, till
date. Hence, the defendant is liable to deliver vacant peaceful
possession of the suit property, to the plaintiff. Also, she is
liable to pay the arrears of rent from 01.04.2015 till the
possession is delivered to the plaintiff, alongwith an interest @
12% per annum. The same would be justified, as interest
claimed @ 15% is on the higher side and 12% simple interest
per annum, as awarded by Banks would be justified. Also, the
mesne profits for use and occupation of the premises from the
date of filing of the suit till the possession is received by the
plaintiff, at the rate of Rs.3,000/- per day, is on the higher side
and an amount of Rs.22,000/- per month which is equivalent to*

the agreed rent would be justified alongwith interest @ 12% per annum, as discussed above, in regard to the rate of interest.

22. *Since the suit property was constructed in 2011, as per the Occupation Certificate Ex.P2, the same is exempted from the provisions of The Haryana Urban (Control of Rent & Eviction) Act, 1973, held in **Pooja Chauhan's case (supra)**, **Ashu Kumar's case (supra)**, **Shiv Kumar's case (supra)**, **Ashok Kumar's case (supra)**.*

23. *As a sequel to my findings, the suit of the plaintiff deserves to be decreed. The same is hereby ex-parte decreed with costs, to the effect that the defendant shall deliver peaceful vacant possession of the suit property i.e. House No.789, Sector-17A, Gurgaon, to the plaintiff within one month of this order. Also, she shall pay the arrears of rent and mesne profits at the rate of Rs.22,000/- per month from 01.04.2015, till the possession is delivered to the plaintiff, alongwith a simple interest @ 12% per annum, within one month of this order. If the defendant fails to comply with the abovesaid directions, the plaintiff shall be at liberty to get the relief by way of execution proceedings. Decree-sheet be prepared accordingly. File be consigned to the record room, after due compliance.*

Concededly, the appeal before the Lower Appellate Court is pending and there is no interim stay. The statement of Mr. Aggarwal made

at bar having taken possession has not been controverted by Mr. Jindal.

No doubt, the plaintiff has right to seek execution of the decree
aforementioned, in accordance with law by claiming mense profit but he
may have to run from pillar to post to get the attachment of the property
particularly when arrears are approximately Rs.8 lacs.

In my view, the petitioner-defendant cannot be permitted to
circumvent the orders of this Court, much less decree in the absence of any
interim stay to seek refund of Rs.4 lacs lying deposited with the Registry of
this Court, vide receipt No.1014 dated 27.7.2017. Accordingly, it is ordered
that that amount of Rs.4 lacs lying deposited with the Registry of this Court
be disbursed to the respondent-plaintiff as part of the decretal amount
subject to outcome of the pending appeal against valid signature and
identification. Both the parties are at liberty to raise objection before the
Executing Court regarding the dues, if any or not.

(AMIT RAWAL)
JUDGE

May 09, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No