

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.5940 of 2016

Date of Decision: December 10, 2018

Raj Kumar Jindal & another

...Petitioners

Versus

Vijay Kumar & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Sanjeev Sharma, Advocate,
for the petitioners.

Mr. N.S.Goraya, Advocate,
for respondent No.1.

Mr. Arvind Seth, Advocate,
for respondent Nos.2 & 3.

AMIT RAWAL, J.

The present revision at the instance of the defendants is directed against the impugned order, whereby an application submitted by the respondent-plaintiff for appointment of Local Commissioner in a suit for permanent injunction restraining the defendants from misappropriating the furniture, fixture etc., has been allowed.

Mr. Sanjeev Sharma, learned counsel appearing on behalf of the petitioner-defendants submitted that the SCO No.8, Sector 10, Panchkula was initially allotted in favour of the respondent-plaintiff and defendant No.1 (petitioner herein) as well as their parents to the extent of 1/4th share each vide allotment letter dated 21.11.1990. On 22.03.2001, the aforementioned site, on account of default in payment of instalments, was resumed. Revisional Authority ordered for restoration, which was assailed by the HUDA in this court and the writ petition was allowed. Special Leave

petition before Hon'ble the Supreme Court was dismissed on 18.10.2013. HUDA authorities after following the due procedure, took possession of the site and sealed the same on 27.09.2013. By that time, the plaintiff had already removed all his belongings and shifted his shop to another site, which was jointly owned by the family in Sector 7, Panchkula. Since the present petitioners had been running their crockery business in SCF No.1, Sector 2, Panchkula, HUDA authorities after three years of taking possession, caused an advertisement for auction of various commercial properties including the property in question. The petitioner-defendants were successful owing to the highest bid and allotment letter dated 16.08.2016 (Annexure P-2) was issued in their favour. Possession was taken on 16.08.2016 and since then the possession had been with the petitioner-defendants.

It was next contended that the provisions of Section 18 of the Haryana Urban Development Authority Act, 1977 empowers the HUDA to evict persons from the premises/land and also remove the articles lying in the building. The suit aforementioned at the instance of the respondent-plaintiff was not maintainable. An application under Order 7 Rule 11 CPC was filed, but the same has been dismissed. The respondent-plaintiff cannot be permitted to create evidence by seeking indulgence of the court by way of appointment of Local Commissioner as per the provisions of Order 26 Rule 9 CPC even if the Local Commissioner had been directed to make the inventory after issuing notice to both the counsel. It was nothing but giving a handle to the respondent-plaintiff to obstruct the business of the petitioners and in that process, would be able to seek vengeance which he had been nursing.

Per contra, Mr.N.S.Goraya, learned counsel for respondent No.1 and Mr.Arvind Seth, learned counsel for respondent Nos.2 and 3 supported the impugned order and submitted that no harm and prejudice would be caused to the plaintiff as HUDA cannot be permitted to take possession of the articles at the time of the possession of the building, detail of which has been given in the petition.

I have heard the learned counsel for the parties and appraised the paper book.

The facts noticed above are not in dispute. The short point involved is whether in a suit filed by the plaintiff, by virtue of auction the petitioner-defendants have purchased the property in view of the allotment letter being the highest bidders and in such circumstances, the respondent-plaintiff can be permitted to take the assistance of the court in collecting the evidence, the answer would be 'No'. The auction is also not in dispute. No evidence has been placed on record or pleading in the plaint that at the time of taking possession three years back, respondent- plaintiff did not take the articles. Even the allegation of stealing of sufficient quantity of gold was also made. Court cannot come to the rescue of the plaintiff in creating evidence as he has to stand on his own legs. The order under challenge, in my view, does not stand the touchstone of the reasonability or legality. The same is hereby set-aside.

Revision petition stands allowed.

December 10, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No