

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

Civil Revision No.569 of 2018.

Decided on:-January 29, 2018.

Mishat alias Mishant Girdhar.

.....Petitioner.

Versus

Raj Kumari and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Umesh Kumar Kanwar, Advocate
for the petitioner.

HARI PAL VERMA, J.

The petitioner has filed present revision petition under Article 227 of the Constitution of India impugning the order dated 06.11.2017 passed by learned Additional District Judge, Fazilka, whereby the application filed by him for staying of implementation of the judgment and decree dated 22.05.2017 passed by learned Additional Civil Judge (Senior Division), Fazilka and also for restraining the respondents from interfering in the possession of the petitioner from the suit property, was dismissed.

Briefly stated, the respondent No.1-plaintiff had filed a suit for mandatory injunction directing the petitioner-defendant to hand over the vacant possession of the suit property, as detailed in the plaint and further for recovery of damages @ Rs.10,000/- per month for the use and occupation of demised property from the date of filing of the suit till handing over the possession.

Vide judgment and decree dated 22.05.2017, learned Additional Civil Judge (Senior Division), Fazilka had decreed the suit for mandatory

injunction and had directed the petitioner-defendant to hand over the vacant possession of the property in dispute. The defendants-judgment debtors were also directed to pay damages to the tune of Rs.7,000/- per month for the use and occupation of the property in question from the date of filing of the suit till vacant possession of the suit property is handed over to the respondent-plaintiff. Though the defendants had filed a counter-claim, but the same was also dismissed.

Against the judgment and decree dated 22.05.2017 passed by learned civil Court, the petitioner-J.D. had filed an appeal under Section 96 CPC before the lower appellate Court. Along with the appeal, the petitioner-defendant had filed an application to stay implementation of the impugned judgment and decree dated 22.05.2017 passed by learned civil Court and to restrain the respondent-decree holder from interfering in his peaceful possession or otherwise dispossessing the petitioner illegally and forcibly without adhering to the procedure of law. The said application was dismissed by learned Additional District Judge, Fazilka vide order dated 06.11.2017, which is the subject matter of present revision petition.

Learned counsel for the petitioner has argued that the civil Court had not framed issues in accordance with law. The issues regarding maintainability and valuation of the suit were required to be proved by the plaintiff, but the plaintiff had failed to prove these issues. Therefore, the suit was wrongly and illegally decreed. The judgment and decree dated 22.05.2017 passed by learned civil Court is against the record. The civil Court had pronounced the judgment on 22.05.2017 in favour of the respondent-plaintiff directing the petitioner-defendant to hand over possession of the suit

property. The petitioner has filed appeal along with an application for stay of the impugned judgment and decree dated 22.05.2017 passed by the civil Court as he has a prima-facie case in his favour, but still, the respondent-plaintiff is adamant to dispossess him illegally and forcibly from the house in question. Filing of the appeal is always in continuation of the suit and till it is finally decided, the operation of judgment and decree dated 22.05.2017 passed by learned civil Court should have been stayed.

I have heard learned counsel for the petitioner.

The respondent No.1-plaintiff had filed a suit for mandatory injunction directing the petitioner-defendant and proforma respondents No.2 and 3 to hand over vacant possession of the suit property detailed in the plaint and for recovery of damages of Rs.10,000/- per month for the use and occupation of suit property. Initially, the suit was filed against Madan Lal Girdhar, who died during the pendency of suit and thereafter, the petitioner, who is legal heir of Madan Lal Girdhar had joined the proceedings along with proforma respondents No.2 and 3.

As per the judgment and decree dated 22.05.2017 passed by learned civil Court, the petitioner and proforma respondents No.2 and 3 were required to pay Rs.7,000/- per month for use and occupation of the premises from the date of filing of the suit till the date of decision of the suit. But the petitioner has not deposited the said amount and as a result thereof, the respondent No.1-plaintiff had filed an execution application so as to take possession of the suit property.

Vide impugned order dated 06.11.2017, learned lower appellate Court had accepted the application for stay of the operation of the judgment

and decree dated 22.05.2017 passed by learned civil Court subject to the condition that (i) the appellant (petitioner herein) will deposit the amount @ Rs.7000/- per month from 19.11.2013 to 30.11.2017 in the Court within 30 days from the date of order i.e. 06.11.2017 and (ii) the appellant (petitioner herein) will continue to pay in future the amount @ Rs.7000/- per month from 01.12.2017 till disposal of the appeal by the 10th of every month.

Admittedly, even the aforesaid amount has not been deposited by the petitioner and he has challenged the order dated 06.11.2017 passed by learned lower appellate Court. The parties are in close relations. The respondent No.1 is maternal grandmother of the petitioner and she is a senior citizen having no other source of income. She is stated to be badly in need of money. Once the petitioner has not come forward to comply the conditions as enumerated in the impugned order dated 06.11.2017, this Court finds that no interference is warranted by invoking the provisions of Article 227 of the Constitution of India. The petitioner is using the property in dispute, but is not ready to deposit the amount for the use and occupation of the property.

Accordingly, the impugned order dated 06.11.2017 passed by learned Additional District Judge, Fazilka is affirmed and the present revision petition, being devoid of any merit, is dismissed.

January 29, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No