

Civil Revision No.678 of 2018 (O&M)

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

Civil Revision No.678 of 2018 (O&M)
Date of decision: 30.05.2018

M/s Billu Tent House

.....Petitioner

versus

Haryana Urban Development Authority and others

.....Respondents

Civil Revision No.9017 of 2017 (O&M)

M/s Billu Tent House

.....Petitioner

versus

Ajit Kumar Sharma and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Vikas Bahl, Sr. Advocate,
with Mr. Kshitij Sharma, Advocate,
and Mr. Rohan Jain, Advocate,
for the petitioner in CR-678 of 2018.

Mr. Kshitij Sharma, Advocate,
for the petitioner in CR-9017 of 2017.

Mr. Deepak Sabharwal, Advocate,
for respondents No.1 and 2 in CR-678 of 2018 and
for respondents No.12 to 15 in CR-9017 of 2017.

Mr. O.P. Goyal, Sr. Advocate,
with Ms. Deepshikha, Advocate, for the applicants
in CM Nos.3257 & 10576-CII of 2018 in CR-678 of 2018.

RAMENDRA JAIN, J. (ORAL)

CM-3257-CII of 2018

Through this application under Order 1 Rule 10 read with

Section 151 CPC, prayer has been made to implead the applicant-members

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of HUDA Gymkhana Club, Sector 29, Gurugram, as respondents No.4 to 11 in CR No.678 of 2018. The application is supported by an affidavit.

For the reasons mentioned in the application, same is allowed. Persons mentioned in para 2 of the application are permitted to be impleaded as respondents No.4 to 11 in the aforesaid revision petition, subject to all just exceptions.

Amended memo of parties filed along with application is taken on record.

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Through this revision petition under Article 227 of the Constitution of India, challenge has been laid to order dated 04.12.2017 (Annexure P-1) of the trial Court and order dated 29.01.2018 (Annexure P-2) of the First Appellate Court, whereby application of the petitioner under Order 39 Rules 1 and 2 CPC has been dismissed.

In nutshell, petitioner applied to respondents-HUDA department for allotment of open space/lawn in its Club, named, Gymkhana Club, Sector 29, Gurugram, to erect and run a marriage pandal and offered to pay ₹25.00 lakhs per annum as lease money. After due consideration and deliberations, officers of the respondent-HUDA department decided to allot sufficient open space/lawns to petitioner-M/s Billu Tent House, enhancing the lease money from ₹25.00 lakhs to ₹35.00 lakhs per annum.

Consequently, a lease agreement dated 21.09.2017 was executed between the petitioner and respondent-HUDA department, granting lease to the petitioner for nine years on BOT basis. Resultantly, petitioner erected a marriage pandal in the premises of Gymkhana Club and started paying lease money.

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However, on raising objection by some of the members of the Club qua allotment of open space to the petitioner in the premises of Gymkhana Club detrimental to the interest of the Club members, without asking them and taking their consent secretly, the Executive Committee of the respondent-HUDA Gymkhana Club reviewed its decision for allotment of open space in its Gymkhana Club, Gurugram, to the petitioner and cancelled the lease in favour of the petitioner vide decision taken in meeting dated 24.10.2017 (Annexure P-11).

Petitioner raising grouse that the aforesaid order cancelling its lease was passed unilaterally without affording him opportunity of hearing, approached the civil Court by way of civil suit for permanent injunction along with application under Order 39 Rules 1 and 2 read with Section 151 CPC to restrain the respondents to cancel its lease.

It is noteworthy that during the pendency of the suit, some of the Club members filed application for impleading them as party in the civil suit as well as in this revision petition.

The trial Court, after hearing both the sides, dismissed the said application of the petitioner under Order 39 Rules 1 and 2 read with Section 151 CPC vide impugned order dated 04.12.2017 (Annexure P-1).

Being aggrieved from the aforesaid order, petitioner approached the First Appellate Court for staying the respondents from cancelling its lease till the disposal of the suit, but remained unsuccessful as its appeal too was dismissed vide impugned order dated 29.01.2018 (Annexure P-2).

Similarly, some of the Club members who have filed application for impleading them before this Court, also filed a separate suit

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against the respondents-HUDA department challenging the aforesaid allotment in favour of the petitioner, without impleading the petitioner as party, in which also the petitioner moved application to implead it as a party. However, the same was rejected by the trial Court vide order dated 04.12.2017.

The petitioner has also laid challenge to the said order by way of separate revision bearing Civil Revision No.9017 of 2017, which shall also be deemed to have been disposed of with this revision petition.

Since some of the members of the Club have been permitted to become party in this revision, therefore, application of the petitioner to become party in the suit filed by some members of the respondents-HUDA Gymkhana Club, Gurugram is also allowed. Resultantly, impugned order in Civil Revision No.9017 of 2017 is set aside and the revision is disposed of accordingly.

Heard.

During the course of arguments, both the sides have arrived at a consensus in the following manner:

1. Temporary superstructure/infrastructure built by petitioner M/s Billu Tent House in the Gymkhana Club of respondent-HUDA shall be got evaluated from independent valuer, so to be appointed by this Court, with the consent of the parties, who after visiting the site would evaluate the value of each and every item/article of the superstructure/infrastructure separately erected/placed by petitioner Billu Tent House, except air-conditioning equipments installed by petitioner by taking the same on rent, which the petitioner wants to take back and return, and would submit his report within two weeks from his

appointment. His fee shall be equally shared by both the sides.

2. With the consent of learned counsel for both the sides, Mr. Rattan Lal Laroia, Retired Executive Engineer (Civil), BSNL, R/o 90, Vishal Nagar Extension, Ludhiana, is appointed as valuer. His fee is assessed at ₹1.00 lakh. In case, the valuer aforesaid further needs assistance/help of some expert in the field of valuation of properties/assets for preparation and submission of a perfect valuation report, he is permitted to do so on his own expenses. He be intimated through Worthy District and Sessions Judge, Ludhiana, today itself about his appointment as such along with a copy of this order so as to enable him to come in action without any delay.
3. On submission of report by the valuer within the prescribed time, petitioner Billu Tent House may opt, either to accept the valuation report or to remove the complete superstructure/infrastructure/items and articles fixed by it. In that case, it would be allowed one month's time to remove the same and to hand over the vacant possession to the respondents-HUDA. In case, petitioner chooses to receive money for the superstructure/infrastructure, in that eventuality, respondents-HUDA would make payment to it immediately within one week as per Clause (4) of the lease agreement dated 21.09.2017 or at the time of handing over of possession, through cheque/demand draft.
4. Further, if the petitioner does not opt to receive money as per Clause (4) of the lease agreement dated 21.09.2017 and the value of the superstructure/infrastructure is assessed more than ₹45.00 lakhs, which is the outer limit of investment by petitioner Billu Tent House as per Clause (4) of the

lease agreement for erecting/building a pandal, by the valuer, in that eventuality, respondent-Gymkhana Club should have option either to pay entire amount assessed as per valuation report to the petitioner, in which situation, the moment the entire amount is paid to the petitioner, the petitioner would hand over vacant possession of the premises to the respondent-HUDA. In case, respondent-Club in terms of Clause (4) intends to pay ₹45.00 lakhs only as outer limit fixed in above Clause of the lease agreement to the petitioner against superstructure/infrastructure, in that eventuality, respondent-Club would permit the petitioner to remove articles/items/superstructure/infrastructure of his choice beyond the value of ₹45.00 lakhs and would retain the articles/superstructure/infrastructure etc. upto the value of ₹45.00 lakhs.

5. Petitioner Billu Tent House would pay compensation to respondents-HUDA for one month, in case, it opts to remove its superstructure/infrastructure, equivalent to the amount of lease money. But by no means it shall be treated as lease money.
6. HUDA shall be at liberty either to run the Gymkhana Club, Gurugram, on its own or may re-auction it by e-tendering and thereafter e-bidding also for which the petitioner shall have no objection whatsoever.
7. Any of the parties, if would wriggle out from the stipulations made in this order shall positively be burdened with exemplary costs of ₹10.00 lakhs to be deposited with the Legal-aid fund and ₹20,000/- per day as damages. In case of non-payment of the same, he shall be non-suited for all intents and purposes in view of the fact that none of them has objected to this order.

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Both suits shall also be disposed of in above terms by the trial Court.

This order has been announced in open Court having been agreed by all the parties.

May 30, 2018
R.S.

(Ramendra Jain)
Judge

Whether speaking/reasoned Yes/No

Whether reportable Yes/No.