

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 129

CR-7030-2018

Date of decision : 23.10.2018

Rakesh Kumar @ Happy and others

..... Petitioners

VERSUS

Suman Sharma

..... Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Raj Paul Kansal, Advocate, for the petitioners.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 06.09.2018, passed by the Additional District Judge, Ludhiana (for short, the Appellate Court), through which, while staying the operation of the judgment and decree appealed against, the petitioners have been directed to deposit 60% of the arrears of mesne profits within a month as also monthly mesne profits @ ₹6,000/-, subject to the outcome of the appeal and upon furnishing indemnity bonds by the respondent.

The facts in brief which are required to be noticed for adjudicating upon the present petition are that the respondent filed a suit seeking therein mandatory injunction to direct the petitioners, who were the defendants in the suit, to leave, vacate and hand over vacant possession of part of the property detailed and described in the headnote of the plaint (for short, the suit property). Permanent injunction to restrain the petitioners from parting with the possession of the suit property to any other person and to further restrain them from making any addition or alteration in the suit property was also prayed for. Mesne profits @ ₹10,000/- per month for use and occupation of the suit property were also sought.

After sifting the evidence which was led by both parties, the Trial Court concluded that the petitioners were not in possession of the suit property as tenants and were licensees under the respondent. Therefore, on revocation of their licence by the respondent they had no right to be in possession of the suit property. Accordingly, the respondent's suit was decreed for the aforesaid reliefs. The respondent was further held entitled to mesne profits @ ₹10,000/- per month from the date of filing of the suit alongwith interest @ 6% per annum.

The petitioners filed an appeal against the aforesaid judgment and decree of the Trial Court. Alongwith the appeal, they filed an application under Order 41 Rule 5 CPC seeking stay of the operation of the aforesaid judgment and decree. The Appellate Court granted stay subject to the petitioners' depositing 60% of the arrears of mesne profits as awarded by the Trial Court within a month as also monthly mesne profits @ ₹6,000/- for the future. Such deposit was ordered to abide by the final outcome of the appeal. It was further directed that the mesne profits would be received by the respondent upon furnishing of indemnity bonds. The direction of the Appellate Court with regard to deposit of mesne profits is under challenge in the present proceedings.

Learned counsel for the petitioners has been heard.

Through judgment and decree dated 13.03.2018 the Trial Court decreed the respondent's suit and held her entitled to vacant possession of the suit property after holding the petitioners to be licensees under the respondent. The Trial Court further held that the petitioners had continued to possess the suit property, which was a *dhaba*, even after the

respondent had revoked their licence and therefore for the period that they occupied and used the suit property for commercial purposes, they were directed to pay mesne profits @ ₹10,000/- per month from the date of filing of the suit. Interest was also granted. In the appeal preferred by the petitioners against the aforesaid judgment and decree of the Trial Court the Appellate Court stayed its operation subject to the petitioners' depositing 60% of the arrears of mesne profits as awarded by the Trial Court as also future mesne profits @ ₹6,000/- per month.

Once the petitioners have been held to be licensees under the respondent by the Trial Court and they continued to be in possession of the suit property, which is a *dhaba* and used it for commercial purposes even after their licence had been revoked by the respondent, no fault can be found in the order of the Appellate Court staying the operation of the aforesaid judgment and decree passed by the Trial Court subject to the petitioners' depositing 60% of the arrears of mesne profits as also future mesne profits @ ₹6,000/- per month against the mesne profits @ ₹10,000/- per month granted by the Trial Court especially when such deposit by the petitioners is directed to be subject to the final outcome of the appeal and to be received by the respondent upon furnishing indemnity bonds.

The Appellate Court has rightly balanced the rights between the parties by granting concession of 40% to the petitioners qua the mesne profits awarded by the Trial Court and securing such deposit by ordering that such deposit shall abide by the final outcome of the appeal as also that the same would be received by the respondent against furnishing of indemnity bonds and on the other hand holding the respondent entitled to mesne profits

for the usage of her property by the petitioners for commercial purposes during the pendency of the appeal.

In view of the above, no merit is found in the present petition.

Dismissed.

23.10.2018
shamsher

[DEEPAK SIBAL]
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No