

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

C.R. No.3315 of 2017 (O&M)
Date of Decision.15.01.2019

Joga Singh ...Petitioner
Vs
Avtar Singh Kalsi ...Respondent

2. C.R. No.3640 of 2017

Joga Singh ...Petitioner
Vs
Avtar Singh Kalsi ...Respondent

3. COCP No.1611 of 2017

Joga Singh ...Petitioner
Vs
Avtar Singh Kalsi ...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Promila Nain, Advocate
for the petitioner.

Mr. Vaibhav Sehgal, Advocate
for the respondent.

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AMIT RAWAL J. (ORAL)

This order of mine shall dispose of two revision petitions
and one contempt petition at the instance of the petitioner-
tenant/judgment debtor.

C.R. No.3315 of 2015 has been preferred against the
impugned order dated 01.12.2016 (Annexure P-1) wherein
application for issuance of direction to the decree holder to open the
lock put by him on the tenanted premises and restoration of the
tenanted premises has been dismissed.

C.R. No.3640 of 2017 has been preferred against the
impugned order dated 30.03.2017 (Annexure P-4) wherein the

objection to the execution proceedings dated 15.02.2017 (Annexure P-2) have been dismissed.

COCN No.1611 of 2017 has been filed for alleged disobedience of the order dated 08.07.2015 passed by this Court.

The respondent-landlord filed the suit for recovery of the arrears of rent, which was decreed vide judgment and decree dated 28.07.2016 for an amount of ₹30,700/- along with interest @12% per annum from the date of filing of the suit i.e. 18.09.1998 till filing of the execution i.e. ₹75,384/-. The tenant had evicted the premises in the execution application and further premises were sold vide sale deed dated 05.05.2008.

The suit was only confined to the arrears of rent as in the rent proceedings, the petitioner-tenant was evicted. The tenant had ascertained his right in the property by moving application for issuance of direction for restoration of the possession in decree for arrears of rent, which is not permissible in law, as the decree dated 20.04.1998 was ex parte. An application under Order 9 Rule 13 CPC was filed for setting aside the ex parte decree, which was dismissed by the Rent Controller and an appeal against the same is stated to be pending.

The petitioner has separate remedy in pending appeal as factum of the matter is that he has already been dispossessed and unless and until, the ex parte decree is not set aside, restoration cannot be ordered. Be that as it may, as the decree has attained finality in the absence of any appeal, the revision petition bearing No.3640 of 2017 is dismissed.

As regards the dismissal of the application in execution application bearing No.184 dated 20.05.1998 as noticed above, without setting aside the ex parte decree, relief sought in the revision petition bearing No.3315 of 2017 cannot be granted, particularly when the appeal against the dismissal of the application under Order 9 Rule 13 CPC is pending. The impugned order cannot be said to be suffering from any infirmity and passed without jurisdiction. Resultantly, civil revision bearing No.3315 of 2017 is dismissed.

In view of the dismissal of the revision petitions, no further orders are required in contempt petition. The contempt petition is also dismissed as having become infructuous.

(AMIT RAWAL)
JUDGE

January 15, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No