

**In The High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-14050-2019 (O&M)

Date of Decision:- 28.3.2019

Attar Singh Chhikara

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Abhimanyu Singh, Advocate, for the petitioner.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner has approached this Court challenging order dated 11.2.2019, passed by learned Additional Sessions Judge, Gurugram, whereby an application filed by him for stay of payment of costs of ₹50,000/-, as imposed by the trial Court, had been dismissed.
2. A few facts necessary to notice for disposal of this petition are that the petitioner was a tenant in a premises, the landlord of which had filed a civil suit for his eviction as well as for seeking mesne profits. During the course of the civil suit, an application under Order 39 Rule 10 read with Section 15-A CPC was filed which was disposed of vide order dated 8.9.2017. The operative portion of the said order reads as follows:

“..... Accordingly when the defendant continued with possession and even the mutual agreement enforceable by law continued, the defendant is certainly under an obligation to clear the arrears of rent, which is due from April 2016. Perusal of the lease deed dt. 30.12.2015 well establish the agreed rate of monthly rent of Rs.25,000/-. Hence, the defendant can very well be held to be in arrears for sixteen months and is liable to pay an amount of Rs.25,000/- x 16 plus interest @ 9% per annum i.e. total of Rs.4,36,000/- within one month from today, failing which the defence of the defendant will be struck off.”

3. The petitioner, aggrieved with said order thereafter filed an application under Section 156(3) Cr.P.C. seeking registration of FIR in respect of offences under Sections 191, 192, 24 and 420 of IPC, wherein certain allegations were levelled against the Judicial Officer who had passed aforesaid order dated 8.9.2017. It was alleged that the Judicial Officer while passing order dated 8.9.2017, had relied upon false and fabricated lease agreement which had been executed by fraud. Learned Judicial Magistrate 1st Class, Gurugram, while observing that the applicant, if aggrieved by order dated 8.9.2017, could have filed an appeal and also while noticing of provisions of Section 3 of the Judges (Protection) Act, 1985, held that the application was nothing but a blatant attack on the independence of the judiciary and consequently dismissed the application on 18.1.2019 while imposing exemplary costs of ₹50,000/-, to be deposited in District Legal Services Authority, Gurugram.

4. The petitioner thereafter preferred an appeal before the Court of Additional Sessions Judge, Gurugram, challenging order dated 18.1.2019. During the course of pendency of the said appeal, an application was moved by the petitioner seeking stay of costs of ₹50,000/-. Learned Court of Additional Sessions Judge, dismissed the said application vide order dated 11.2.2019 which has been challenged by way of filing the present petition.
5. I have heard the learned counsel for the petitioner and have also gone through the impugned order. Learned counsel for the petitioner has submitted that order dated 8.9.2017 was not passed in accordance with law and in fact when the order was passed, the petitioner had already vacated the premises in question and in these circumstances there was no occasion to direct the petitioner to deposit arrears of rent. Learned counsel has further submitted that the petitioner had filed application under Section 156(3) of Cr.P.C. simply to avail of all the remedies available to him in good faith without any malafide intention or any ulterior motive and that in these circumstances the order imposing heavy costs of ₹50,000/- while dismissing the application was not called for.
6. Learned counsel has further submitted that since the said order dismissing his application under Section 156(3) Cr.P.C. and imposing costs of ₹50,000/- has already been challenged by way of filing an appeal, the operation of deposit of ₹50,000/- is required to be stayed as the petitioner is not possessed of sufficient funds and it would

cause undue hardship to the petitioner, who is retired from Army, in case the order requiring him to pay ₹50,000/- as costs is not stayed.

7. Having considered the aforesaid submission, and in view of totality of facts and circumstances, and while refraining to express any comment on merits of the case lest it may affect the appeal filed by petitioner, the petition is disposed of by modifying order dated 11.2.2019 to the effect that deposit of costs of ₹50,000/-, as imposed by the learned Judicial Magistrate 1st Class, shall remain stayed beyond ₹20,000/-, during the pendency of the appeal. Needless to mention, in case the petitioner is successful in his appeal, he shall be entitled to seek refund of the deposited amount.

March 28, 2019

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(GURVINDER SINGH GILL)
JUDGE

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No