

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No. 104

Case No. : C. R. No. 3277 of 2019

Date of Decision : September 12, 2019

Darshan Singh alias Palayal Pardhaan Petitioner

vs.

Harpal Kaur Respondent

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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Present : Mr. Arun Takhi, Advocate
for the petitioner.

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DEEPAK SIBAL, J. (Oral) :

The present petition is directed against the order dated 21.02.2019 passed by the Additional District Judge, Hoshiarpur (for short – the Appellate Court) dismissing an application filed by the petitioner, through which, during the pendency of his appeal, he had sought stay of the operation of the judgment and decree of the Trial Court against which he has filed his appeal.

The noticeable facts, in brief, are that the respondent instituted proceedings before the Rent Controller, Hoshiarpur, seeking therein eviction of one Jaswinder Singh from the suit premises on the ground that the said Jaswinder Singh, who was the respondent's tenant, had failed to pay the agreed rent. Jaswinder Singh was served but since he failed to appear before the Rent Controller, he was proceeded against ex-parte. On the basis

of ex-parte evidence led by the respondent, through an order dated 02.11.2010, the Rent Controller ordered Jaswinder Singh's eviction. However, before the respondent could be put in possession of the suit premises, the petitioner, who is Jaswinder Singh's real brother, filed a suit seeking therein to injunct the respondent from illegally dispossessing him from the suit premises. The case set up by the petitioner was that since the year 1990, the respondent had rented out the suit premises to him and not to his brother Jaswinder Singh and that the agreed rent was being regularly paid by him but in spite of the same, the respondent was threatening to illegally dispossess the petitioner.

On being put to notice, the respondent appeared before the Trial Court and filed a written statement denying the case set up by the petitioner. It was stated that the deceased husband of the respondent had rented out the suit premises to Jaswinder Singh – the brother of the petitioner. After the death of the respondent's husband, she became owner of the suit premises and when Jaswinder Singh stopped paying rent, she filed an eviction petition which was allowed by the Rent Controller, Hoshiarpur on 02.11.2010. The respondent had filed an execution petition but due to some technical error, warrants of possession could not be executed. It was submitted that under the garb of his suit, the petitioner wanted to grab the property of the respondent.

The Trial Court sifted the evidence led by the parties and concluded that the petitioner had failed to prove that it was he who was the respondent's tenant, resulting in the dismissal of his suit. Aggrieved by such

dismissal, the petitioner filed an appeal. Along with his appeal, he filed an application under Order 39 Rules 1 and 2 CPC seeking therein ad interim stay. The Appellate Court dismissed the application filed by the petitioner. Such order of the Appellate Court is under challenge in the present proceedings.

Learned counsel for the petitioner has been heard.

In the year 2009, the respondent – a widow aged 89 years, had filed a petition seeking therein ejectment of one Jaswinder Singh from the suit premises. Her eviction petition was allowed on 02.11.2010. However, before she could secure possession of the suit premises, the petitioner, who is Jaswinder Singh's real brother, filed a suit seeking therein to injunct the respondent from dispossessing him from the suit premises on the ground that it was he, who was the respondent's tenant and not Jaswinder Singh.

After sifting the evidence led by the parties, the Trial Court dismissed the petitioner's suit.

No worthwhile evidence is found to have been led by the petitioner in support of his plea that as the respondent's tenant, it is he who is in possession of the suit premises for the last 18 years. No electricity or water bill has been produced.

Only one document was produced by the petitioner, which purportedly was a rent receipt given by the respondent but both the Trial Court as also the Appellate Court have concurrently held that from a perusal of the receipt, it cannot be deciphered that the same acknowledges payment of rent by the petitioner to the respondent. Nothing has been submitted or

shown for this Court to take a different view. The only other document which was produced by the petitioner was a house-tax bill which also could not be related to the suit premises.

In view of the above, the petitioner has no prima facie case or balance of convenience in his favour. No irreparable loss would also be caused to the petitioner on the execution of the judgment and decree of the Trial Court as in the eventuality of his appeal being accepted, he would always have the remedy provided under Section 144 CPC for restitution of his possession.

Dismissed.

(DEEPAK SIBAL)
JUDGE

September 12, 2019
monika

<i>Whether speaking/reasoned ?</i>	<i>Yes/No.</i>
<i>Whether reportable ?</i>	<i>Yes/No.</i>