

CR-5337 of 2019 (O&M)

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

CR-5337 of 2019 (O&M)
Date of decision: 02.09.2019

State Bank of India

.....Petitioner

versus

Rajbir Singh Rai and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Abhinav Gupta, Advocate, for the petitioner.

RAMENDRA JAIN, J. (ORAL)

Through this revision under Article 227 of the Constitution of India, Bank has laid challenge to order dated 08.05.2019 (Annexure P-13) of the executing Court, whereby its application under Order 26 Rule 10(3) read with Section 151 of the Code of Civil Procedure for cross-examination of the local commissioner was dismissed.

Briefly, respondents filed ejectment petition under Section 13 of the East Punjab Urban Rent Restriction Act for eviction of petitioner-bank from SCO Nos.1 to 3, Sector 17-B, Chandigarh. During its pendency, compromise Ex.C2 was arrived at between petitioner-bank and respondents-landlord, whereby, petitioner agreed to pay rent @ ₹18/- per sq. feet from 2006 to 2011 and ₹55/- per sq. feet w.e.f. 2011 to 2016. Abovesaid SCO No.1 to 3 shall finally be vacated at the end of October, 2016.

The Rent Controller pursuant to the said agreement entered into between the parties in a meeting held on 22.06.2016, disposed of the eviction petition vide order dated 19.08.2016 granting time to the petitioner-bank to vacate the demised premises by 31.10.2016 observing that in case,

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the petitioner would not abide by the compromise Ex.C2, in that eventuality, respondents shall have a right to obtain possession of the demised premises by filing execution petition.

According to learned counsel for the petitioner-bank, pursuant to the aforesaid agreement, bank had vacated the demised premises on 26.08.2016. However, respondents filed execution petition for recovery of the arrears of agreed rent. There was a dispute qua area of the demised premises. Therefore, executing Court vide order dated 20.03.2019 (Annexure P-7) appointed local commissioner to measure area of the demised premises and report. Pursuant thereto, local commissioner, a Junior Engineer from the Estate Office, U.T., Chandigarh, submitted his report on 08.04.2019 reporting that total area of the demised premises was 2977 sq. feet.

Being dissatisfied with the said report, petitioner-bank filed objections (Annexure P-9), which were rejected by the executing Court vide order dated 08.05.2019 (Annexure P-10). Before dismissal of objections of the petitioner-bank, it also filed an application under Order 26 Rule 10(3) read with Section 151 CPC for summoning of local commissioner to cross-examine him on his report, which after contest from the respondents-landlord has been rejected vide order dated 08.05.2019 impugned herein.

Learned counsel for the petitioner *inter alia* contends that the executing Court illegally rejected the application of the petitioner-bank seeking cross-examination without appreciating the fact that local commissioner had exceeded his jurisdiction. The manner in which the local commissioner measured area of the demised shop was also wrong. Local

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report was liable to be set aside. In support of his contentions, learned counsel relied upon Indian Standard Method of Measurement of Plinth, Carpet and Rentable Areas of Buildings and judgment rendered by this Court in **Gajraj v. Subey Singh**, C.R. No.975 of 2017, decided on 13.02.2017.

Having given thoughtful consideration to the submissions made by learned counsel for the petitioner, this Court finds the instant revision, completely devoid of any merit for the reasons to follow.

No question of law much less substantial has been raised in this revision. Therefore, this revision is held not maintainable.

This Court while exercising its revisional powers has very limited jurisdiction, which can only be exercised, (i) when the Courts below have acted beyond jurisdiction vested in them or (ii) have not exercised the same diligently and (iii) have exercised illegally.

Learned counsel for the petitioner has not been able to show any such infirmities in the order of the executing Court.

The demised SCOs under the tenancy of the petitioner-bank undisputedly are allotted by the U.T. Administration. Thus, no dispute could have been raised to their measurement by the petitioner-bank inasmuch as the same must have been mentioned in the allotment letter and the possession letter. In case, petitioner-bank or its officers would have been honest in their intentions, they must have requested the executing Court to direct the respondents to place on record the copy of allotment letter or possession letter to find out the correct area of the demised SCOs for payment of arrears of rent. Raising of an erroneous and illegal dispute

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or its officers speaks volumes about their *mala fide* conduct to harass the respondents-landlord inasmuch as their personal rights were not at stake. Despite that executing Court to satisfy the whims and fantasies of the petitioner-bank, appointed a local commissioner with the consent of the respondents-landlord, who measured the entire area of the demised premises and reported it to be 2977 sq. feet. The area under the walls according to petitioner-bank has to be excluded which is impossible inasmuch as without walls the demised premises would have been in the shape of an open plot in which the petitioner-bank could not have run its banking business. Therefore, it was obvious for the local commissioner to calculate and count the area underneath the walls of the demised premises, while calculating total area of the tenanted premises. Therefore, stand of the petitioner that area under the walls was to be excluded, is not only mis-conceived, rather is *mala fide*. Earlier, the petitioner-bank with *mala fide* and dis-honest intention filed objections against the report of the local commissioner which were dismissed. Simultaneously, bank also filed instant application, which has been rejected vide order impugned herein.

I have gone through impugned order and find no illegality or perversity in the same inasmuch as report of the local commissioner is unambiguous qua area of the demised premises.

In view of discussion above, revision is dismissed.

(Ramendra Jain)
Judge

September 02, 2019
R.S.

Whether speaking/reasoned Yes/No

Whether reportable Yes/No