

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

**ESA-220-2016 (O&M)
Date of Decision : 25.11.2019**

Gurbir Singh

..... Appellant

Versus

Swaranjit Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAMENDRA JAIN

Present : for Mr. Amandeep Singh Rai, Advocate
 for the appellant.

Mr. Bhriagu Agnihotri, Advocate
for the respondents.

RAMENDRA JAIN, J. (Oral)

Through this Execution Second Appeal, the tenant has laid challenge to the order dated 19.05.2016 of the Appellate Court, affirming the order dated 28.09.2015 of the Executing Court, whereby his application under Order 21 Rule 32 read with Section 151 CPC was dismissed.

Briefly, appellant-tenant filed a suit for permanent injunction, restraining the respondents from interfering in his lawful possession over the first floor of the demised property which, after holding trial, was decreed vide judgment and decree dated 03.12.2008.

Around seven years thereafter, appellant filed an application before the Executing Court for execution of aforesaid judgment and decree alongwith an application under Order 21 Rule 32 read with Section 151 CPC, which was contested by respondents, on the ground that they never interfered into the possession of appellant. Thus, aforesaid application of

the appellant was not maintainable. From pleadings of the parties, Executing Court framed the following two issues:-

- 1. Whether the JDs have disobeyed the order of the Court dated 03.12.2008 passed in the Civil Suit No.619/2008 titled as Gurbir Singh vs. Swaranjit Singh etc. ? OPDH*
- 2. Whether the present application u/o 21 rule 32 of CPC is not maintainable ? OPJD*

Appellant, as AW1, tendered his affidavit Ex.AW1/A towards his examination-in-chief and relied upon by documents Ex.A1 to A7. His cross examination was partly recorded on 23.07.2013. It was deferred to 08.11.2013 for want of some documents. On the adjourned date, appellant did not bring the required documents and made a statement that he cannot produce the required documents without police help. Resultantly, police assistance was provided to him. However on the adjourned date i.e. 15.07.2014, appellant made a statement that he does not require any police help to bring documents. Fifteen days thereafter, on 01.08.2014, appellant moved an application to review order dated 15.07.2014. Thereafter, his execution application was repeatedly adjourned either on one pretext or the other on request of the appellant for completion of his cross-examination. However, he, without completion of his cross-examination by the opposite side, voluntarily closed his evidence. Since, appellant intentionally did not offer himself for his further cross-examination and closed his evidence in affirmative, therefore, his statement as AW1 was not liable to be considered in evidence as a legal and valid statement.

Thus, in the absence of any evidence on record, Executing Court dismissed the execution application and application under Order 21 Rule 32 read with Section 151 CPC of the appellant, vide order dated

28.09.2015.

Feeling aggrieved, appellant approached the lower Appellate Court, but remained unsuccessful as his appeal too was dismissed vide order dated 19.05.2016.

Learned counsel for appellant contends that respondents-landlord continuously kept in disobeying the judgment and decree dated 03.12.2008 in favour of appellant. They even changed the locks of the main gate to create hurdle in possession of appellant. Respondents also installed an iron gate to create hurdle in smooth egress and ingress of the appellant to the demised property. They have also demolished the basic structure of the said property.

On the other hand, learned counsel for respondents refuting the above submissions, pleaded the legality and validity of the impugned order.

Having given thoughtful consideration to the rival contentions, this court finds the instant appeal merits dismissal for the reasons to follow.

There was no iota of evidence before both the courts below qua alleged violation of judgment and decree dated 03.12.2008 by the respondents. Therefore, in the absence of any evidence, both the courts below had no other option, but to dismiss the execution application and application under Order 21 Rule 32 CPC of the appellant. Alleged photographs produced on record by appellant before the Executing Court could not have been taken into consideration for non-proving them legally without examination of their author/photographer.

I have gone through the judgments of both the Courts below and the same do not suffer from any illegality, irregularity or perversity.

Thus, they do not call for any interference by this Court.

No question of law much less substantial has been raised in this appeal. Hence the same is held not maintainable.

Dismissed.

25.11.2019
mamta

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No