

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

**Civil Revision No.746 of 2020 (O & M)
Date of Decision:3.2.2020**

Chander Bhan

...Petitioner

Versus

Vijay Kumar and others

...Respondents

CORAM: HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr.Arun Sharma, Advocate
for the petitioner

RAJIV NARAIN RAINA, J. (ORAL):

1. Prayer in this petition is for setting aside the impugned order dated 20.1.2020 (Annex.P9) passed by the Executing Court, Yamuna Nagar, whereby stay application of the petitioner has been dismissed and warrants of possession have been issued in implementation of the decree.

2. Heard learned counsel for the JD petitioner.

3. Argues that the decree was appealed against. It was dismissed in default on 9.7.2019. Restoration application was filed and in pending consideration. In my considered view, mere pendency of a restoration application in appeal which was dismissed in default and was filed against the judgement and decree dated 12.7.2018 passed by the learned Civil Judge (Junior Division), Sub-Division Bilaspur, District Yamuna Nagar, is not a valid and sufficient ground for cancelling the warrants of possession obtained by the decree holder against the petitioner-judgement debtor for eviction from the shop in dispute. This petition has been filed against warrants of attachment of the petitioner's pension account for satisfying the

decretal amount.

4. In brief, the petitioner was the one of the two defendants in a suit for possession by way of ejectment. The decree was against Chander Bhan [present petitioner] and one Kamal Kumar [defendant No 2 & non party] evicting them from the plaintiff's shop situated near Sherawali Mata Mandir, Village Chhachhrauli, District Yamuna Nagar claiming as well recovery of rent in a sum of Rs.1,44,000/- along with interest @ 12% per annum on account of rent of the demised shop for the period October 2012 to September 2015.

5. A notice of eviction was served on the defendants on 1.10.2015 [the date of service of notice is not available on record] by the owner. The suit, which has been decreed was filed on 16.10.2015.

6. Aggrieved by the judgment and decree, the defendant-petitioner preferred an appeal before the first Appellate Court under Section 96 of the CPC which was dismissed in default on 9.7.2019 on failure to appear despite due service.

7. The petitioner approached this Court in CR-4300-2019, in which initially an interim order was passed on 15.7.2019, conditional upon deposit of mesne profits as per the decree dated 12.7.2018 within three weeks from the date of order failing which the petitioner was ordered to be dispossessed. In case payment was made, the stay was made operational till the next date of hearing i.e. 25.11.2019. The interim order reads:-

“Learned counsel for the petitioner submits that the learned Appellate Authority, Yamuna Nagar at Jagadhri, has wrongly directed deposit of mesne profits from the date of issuance of notice dated 01.10.2015. At best, the petitioner, can be liable to deposit mesne profits from 12.07.2018 i.e., the date on which the judgement and decree against him, was passed.

Notice of motion for 25.11.2019.

In case, mesne profits, as mentioned in the impugned order are deposited w.e.f., 12.07.2018, within three weeks from today, dispossession of the petitioner, shall remain stayed till the next date of hearing. Needless to say the petitioner shall continue to deposit the mesne profits in future by the 10th of each calender month.”

8. This petition was ultimately dismissed in default on 25.11.2019 by passing the following order:

“Mr. Puneet Sharma, Advocate appears on behalf of respondents no.1 & 2. Power of attorney filed in Court today is taken on record subject to just exceptions. As per office report, respondent no.3 refused to receive the summons. Affixation was carried out. Therefore, service of respondent no.3 is complete. None for respondent no.3, despite service.

Learned counsel for respondents no.1 & 2 submits that this revision petition has been rendered infructuous as the appeal filed by the petitioner-tenant was dismissed in default on 09.07.2019 by the learned Appellate Authority, Yamuna Nagar. It is further submitted that the interim direction to the petitioner to deposit the mesne profits as per order dated 15.07.2019 in this petition has also not been complied with.

Today there is no representation on behalf of the petitioner. It appears that the petitioner is not interested in pursuing the matter any longer.

Petition is accordingly dismissed in default.”

9. Be that as it may, the petitioner filed an application for restoration of the appeal in the district court on 25.7.2019 which is pending. There is no order in operation with the dismissal of the appeal in default. It is argued that pending decision on the restoration application, the warrants of possession issued by the executing Court deserve to be stayed and then recalled. As is noticed by the learned Civil Judge (Jr. Divn.) at Bilaspur in

her order dated 20.1.2020, the attachment is for effecting recovery of mesne profits which has been ordered against the pension account of the judgement-debtor, who is the present petitioner. This means the petitioner is a retired government servant.

10. I do not find any merit in this submission. When defences against the eviction are not open for the petitioner as a former tenant of the shop, there is no gainsaying that he has does not possess any statutory protection of the The Haryana Urban (Control of Rent and Eviction) Act, 1973 (for short, 'the Act'). This is simply because admittedly the Act does not extend over the demised shop, which was reason for the plaintiff to approach the civil court presently at the stage of recovery of money from an un-authorized occupant with right in the landlord to mesne profits for use and occupation. It is for this reason I refrain from interfering in the order dated 20.1.2020 as there is no legal infirmity found in it as the court in execution is only going by the decree. The petitioner has been in occupation of the property after notice of the suit for over 4½ years with the rent/mesne profits accruing every month.

11. While dismissing the petition, this Court observes that it is sanguine that calculation of the mesne profits by the executing court is to be done in accordance with law as per decree. As a matter of fact, the trial Court should have long ago evicted the petitioner on the date when summons were served on him and for mesne profits with effect from the date of service of notice to quit upon the petitioner and when he appeared to defend the case, keeping the suit pending for determination of mesne profits but that was not done. Consequently, much time has been spent over rights and liabilities which came into existence when the landlord served notice on

the petitioning tenant for eviction to regain vacant possession of the demised shop.

12. No ground for interference in the order dated 20.1.2020 passed by the executing Court, is made out.

13. The petition is accordingly dismissed.

February 3, 2020
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(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable-	Yes/No