

**112 RA-CR-135-2022 in
CR-4187-2022**

**M/S K & M HOSPITALITIES AND OTHERS
V/S
M/S IFCL LTD**

Present: Mr. Manjeet Singh, Advocate and
Mr. Varun Veer Chauhan, Advocate
for the applicant-petitioners.

Mr. Ashok Aggarwal, Sr. Advocate with
Mr. Shrenik Jain, Advocate and
Mr. Sanjiv Aggarwal, Advocate
for the respondents.

Reply on behalf of the non-applicant/respondent has been filed
and the same is taken on record.

1. The applicants/petitioners/tenants have moved this application
to recall the statement made by learned counsel at the time of dismissal of
their revision petition against the order of ejectment, vide order dated
17.11.2022, and modify the order to that extent. While dismissing the
petition on merits, following statement of the learned counsel for the
petitioners was also recorded:

Learned counsel for the petitioner states that the
petitioners, in fact, have vacated the demised premises
and possession delivered.

2. Learned counsel for the applicants/tenants has submitted that he
made the aforesaid statement at the time of final decision of the revision
petition due to inadvertence and the same was factually incorrect. On
17.11.2022 when the statement was made, neither the premises had been
vacated by the applicants/tenants nor had the possession been handed over to
the respondent/landlord. Moreover, articles owned and possessed by the

applicants/petitioners including the microbrewery along with all fittings, fixtures and furniture, which were worth more than Rs.5 Crore, were lying in the tenanted premises. He further contends that on 30.09.2022 the respondent has filed an application under Order XXI Rule 11 of the Code of Civil Procedure for execution of the eviction order and delivery of possession of the demised premises, and on the date the statement was made before this Court, the application was pending adjudication. In this context, he referred to an order dated 15.11.2022 (Annexure A-10) of the Executing Court, which reads as under:

Report of SDO concerned along with video CD and rough site plan not received. Let, detailed report of the SDO concerned along with video CD and rough site plan is now awaited till 01.12.2022. Notice to SDO concerned in this regard be also issued for the date fixed.

This order shows that the executing proceedings have been adjourned awaiting report of the SDO concerned along with video CD and rough site plan concerning delivery of possession, and the case was adjourned to 01.12.2022.

3. Learned senior counsel for the respondent/landlord, on the other hand, submits that learned counsel for the applicants/tenants can not be permitted to withdraw the statement made before this Court, and placed reliance upon judgment of Supreme Court of India passed in *Om Prakash v. Suresh Kumar*; 2020 SCC Online SC 100. He has submitted that the applicants/tenants did vacate the premises and hand-over possession to the respondent, who is in possession as on date. At the same time, he refers to a daily diary report dated 21.11.2022 (Annexure R-1)

wherein complaints of both the parties regarding dispute over possession of the demised premises were recorded by the police. Learned senior counsel has further referred to a civil suit dated 21.11.2022 (Annexure R-2) filed by the respondent/landlord by relying upon the statement dated 17.11.2022 against the applicants/tenants seeking permanent/perpetual injunction restraining them from interfering into the peaceful possession of the ground floor and basement of the premises in question. The trial Court issued *ex parte* interim injunction on application filed under Order XXXIX Rule 1 and 2 CPC restraining the defendants (applicants/tenant herein) from interfering in the plaintiff's possession till the next date of hearing, i.e., 01.12.2022. He, therefore, contends that in the light of these subsequent events also which are a result of the statement, the same cannot be allowed to be withdrawn.

4. Learned counsel for the parties have been heard.

5. A perusal of the record shows that execution application filed by the respondent/landlord on the basis of order of eviction is still pending. The Executing Court has sought a detailed reply from the SDO concerned along with video CD and rough site plan; awaiting the report execution proceedings stand adjourned to 01.12.2022. It is, therefore, apparent that the statement made by learned counsel for the applicants/tenants before this Court on 17.11.2022 regarding vacation of the demised premises and handing over the possession thereof, was factually incorrect. The statement appears to have been made due to inadvertence, as pleaded. It is also apparent on record that the applicants/tenants' revision petition against the order of eviction was dismissed on merits, vide order dated 17.11.2022. The order was not passed based on the statement. In case learned counsel for the applicants/tenants is permitted to withdraw the factually incorrect statement

made before this Court, it will have no effect on the decision of the case. The order dated 17.11.2022 reads as under:

This revision petition has been filed against orders of eviction dated 29.08.2022 and 15.09.2022, whereby the petitioner-tenant has been ordered to be evicted from the demised premises on account of non-payment of arrears of rent pursuant to provisional assessment by the Rent Controller in terms of law laid down by the Supreme Court in *Rakesh Wadhawan & Ors. Vs. M/s Jagdamba Industrial Corporation & Ors.*, AIR 2002 SC 2004.

It is not in dispute that provisional assessment of rent was made by the Rent Controller vide order dated 02.08.2022 (Annexure P-1), against which the petitioners' appeal was dismissed by the Appellate Authority vide order dated 25.08.2022 (Annexure P-1/A). On failure to deposit the provisionally assessed rent by the due date, i.e., 28.08.2022, the eviction petition was allowed vide order dated 29.08.2022.

Learned counsel for the petitioner states that the petitioners, in fact, have vacated the demised premises and possession delivered.

In view of the aforesaid, there is no ground to entertain the petition.

Dismissed.

Since the main petition stands decided, all pending applications, if any, are disposed of as having been rendered infructuous.

6. The judgment of the Supreme Court of India in *Om Prakash* case (*supra*), relied upon by the learned senior counsel, can not advance the respondent/landlord's case, nor permission to withdraw the statement can be

declined to learned counsel for the applicants/tenants on that basis. The judgment was rendered by the Supreme Court in a factual situation where, during hearing of a rent petition, learned counsel for the tenant therein urged the High Court that the tenant was ready and willing to hand-over possession of the premises subject to the landlord agreeing to re-induct him as tenant in equivalent area in the newly constructed shops. In response, learned counsel for the landlord therein unequivocally stated before the High Court that the landlord was not averse to the offer made by the tenant. The statement was recorded by the High Court and on that basis, civil revision was disposed of. After disposal of the civil revision, the landlord therein changed his counsel and filed a review petition before the High Court asserting that he never instructed his counsel to make a statement regarding re-induction of the tenant in equal area in the newly constructed building. The said review petition was dismissed by the High Court. The principle argument raised by the landlord before the Supreme Court was that statement made by his counsel before the High Court was not binding on him as it was made without his instructions. In this background, the Supreme Court examined the question whether the landlord was bound by the statement and the tenant would have to be re-inducted in equal area in the newly constructed building. It held that the unequivocal statement made by the landlord's counsel to espouse a cause before the High Court cannot be allowed to be withdrawn. It was not a case where the landlord had expressly instructed his counsel not to make such a statement. Therefore, it could not be said that the counsel in any manner transgressed the authority conferred upon him by the landlord. Further, since the review petition before the High Court was filed by engaging another counsel by the landlord, the Supreme Court deprecated

the conduct of landlord in doing so, and was of the opinion that such review petitions should not be encouraged and need to be dismissed.

7. The factual background of the instant case is entirely different and distinct. Firstly, as discussed above, the statement made by learned counsel before this Court was factually incorrect. Secondly, the application seeking permission to withdraw the statement is *bona fide*, and has been filed by the same counsel who made the statement, on the pleading that it was inadvertently made. It is not a case like *Om Prakash* case (*supra*), where the counsel was changed and the tenant had pleaded that his earlier counsel was never instructed to make the statement in question. Thirdly, in *Om Prakash* case (*supra*) the order sought to be reviewed had been passed on the basis of statement of the counsel itself which was believed by the Court and *lis* disposed of in terms thereof; even that is not the case here, as already discussed herein above. Therefore, looking from any angle the judgment rendered in *Om Prakash* case (*supra*) has no application to the facts of the instant application, and submissions of the learned senior counsel based on it are misconceived.

8. Besides, the subsequent events of filing the civil suit by the respondent/landlord relying upon on the statement dated 17.11.2022 and the *ex parte* interim injunction issued there upon, need not be looked into as rights of the parties have not been determined by those events. The argument of learned senior counsel in this regard, therefore, becomes untenable.

9. This Court is of the view, where a factually incorrect statement has been inadvertently made by a learned counsel, who himself makes *bona fide* prayer seeking permission to withdraw the same, and merits of the

decision rendered remain unaffected by withdrawing the statement, there is no reason why he/she should not be permitted to withdraw it.

10. In view of the aforesaid, the application is allowed. Learned counsel for the applicants/petitioners/tenants is permitted to withdraw his statement dated 17.11.2022 as reproduced in the first paragraph above. Accordingly, the order dated 17.11.2022 shall stand modified to that extent.

(TRIBHUVAN DAHIYA)
JUDGE

24.11.2022
Maninder