

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

CR-646-2023 (O&M)

Date of Decision: 01.02.2023

Amit Arora

....Petitioner

Versus

Jatin Arora

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Shrey Goel, Advocate
for the petitioner.

ARUN MONGA, J. (ORAL)

Petition herein is for issuance of direction to the Executing Court sought by Decree Holder/petitioner to decide the Execution Petition (Annexure P-3) within a stipulated period.

2. Brief factual recitals as pleaded in the petition are that petitioner filed a suit seeking relief of eviction/recovery of possession, recovery of arrears of rent, damages and mesne profits on 07.11.2015 on the ground of non-payment of rent by respondent. Petitioner also submitted that a lease deed had expired by the efflux of time on 03.11.2015. During pendency of the suit, respondent failed to deposit the lease amount as per the mandate of Order 15 Rule 5 CPC. Resultantly, the defence of respondent was struck off vide order dated 17.07.2017. Thereafter petitioner filed an application for judgment upon admission under Order 12 Rule 6 read with Order 20 Rule 12 CPC. Existence of tenancy was not denied by respondent and the lease stood determined in accordance with law.

2.1. Respondent filed a reply to the application filed by petitioner under Order 20 Rule 12 CPC stating that the said application was not maintainable and was an abuse of the process of law. He also denied the ownership of petitioner.

2.2. Learned trial Court after considering the submissions made by parties to the *lis* allowed the application filed by petitioner vide order dated 04.11.2019 (Annexure P-2). The trial Court held that petitioner was successful in establishing all the ingredients necessary for passing decree for possession of arrears and rent, mesne profits on admission. Ld. trial Court further directed the respondent to hand over the possession of the premises in question within 30 days and further held that petitioner was also entitled to recovery of arrears of rent and mesne profits to the tune of Rs.23,100/- p.m. along with interest @ 12% p.m. w.e.f May-2015 till the date of realization. The trial Court also held that petitioner was entitled to damages to the tune of Rs.50,000/- besides rent due. However, since respondent failed to comply with order dated 04.11.2019, petitioner filed the execution application.

2.3. Respondent appeared and filed his objections and also mentioned that he had filed an appeal before learned First Appellate Court, Gurugram. However, Ld. First Appellate court directed respondent to deposit the complete rent in the name of the Court vide order dated 17.02.2020 (Annexure P-5). Since respondent failed to comply with the said order, learned First Appellate Court revoked the injunction granted in favour of respondent vide order dated 24.09.2021 (Annexure P-6). Respondent also filed a revision petition before this Court which was ultimately dismissed as withdrawn on 04.10.2019 (Annexure P-7).

2.4. As per petitioner, respondent is now carrying out illegal activities in the property in question. Learned trial Court in case titled as *Amit Arora vs. Jatin Arora* appointed a Local Commissioner and requested him to visit the suit property and to inspect the same. The Local Commissioner inspected the spot and observed in his report that respondent brought girls everyday around 10 PM in the night and dropped them off around 5-6 AM next morning. Hence, petitioner seeks expeditious disposal of his execution application.

3. Given the nature of order being passed, there is no necessity to issue notice to respondent/Judgment Debtor as no prejudice would be caused to him. Notice to respondent is thus dispensed with.

4. I have heard learned counsel for petitioner and have gone through the case file.
5. Ordinarily this Court would have refrained from interfering in the matter, given that the judgment and decree rendered by learned trial Court is *sub-judice* before learned First Appellate Court and is yet to attain finality. However, since during the pendency of the First Appeal, vide order dated 17.02.2020 (Annexure P-5), the tenant/respondent was directed to deposit the entire rent on the next date (24.03.2020) and the implementation of the judgment and decree was stayed till then only and the said order has attained finality. Since the same was not challenged by the respondent, it is expected of the Executing Court to proceed further for execution of the decree without granting unnecessary adjournments.
6. Learned counsel for petitioner has since pointed out that the execution application was filed sometime in November-2021 and despite respondent having caused appearance in the Executing Court, he has not complied with the order (Annexure P-5) passed by learned First Appellate Court. Resultantly, on one hand, tenant/respondent is enjoying the property of petitioner and on the other hand, he is neither paying any rent nor any *mesne profits*.
7. Be that as it may, it is for the Executing Court to take into account the submissions of petitioner, as noted herein above.
8. Disposed of with the expectation, as above.
9. Pending civil miscellaneous application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

February 01, 2023
ashish

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No