

CM-8337-CII-2023 IN/AND
CR-1083-2020 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CM-8337-CII-2023 IN/AND
CR-1083-2020 (O&M)
Date of decision: May 10, 2023**

Sukhdev Singh and others

....Petitioners

versus

Avinash Mohindru and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Ashok Paul Batra, Advocate for applicant-petitioners.

Mr. Rohit Sud, Advocate for non-applicant-respondents No.1 and 5.

ARUN MONGA, J. (ORAL)

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This is an application for restoration of main revision which was dismissed in default vide order dated 20.02.2023.

For the reasons stated in application, same is allowed. Main case is restored to its original number and the same is taken on Board for hearing today itself.

Main case (O&M)

Petition herein *inter alia* is for setting aside impugned order dated 02.08.2018 (Annexure P-1) passed by learned Additional Civil Judge (Senior Division), Amritsar passed in execution application No.EXE/144/2015. On an application moved by Judgment debtors/respondents No.2 to 4/tenants, learned Executing Court has directed vide interim order herein that rent deposited by JDs in the form of payment voucher be refunded to decree-holders/respondents No.1 and 5 herein.

2. Succinct facts first, as pleaded in the instant petition.

2.1. Tenancy over suit property was created by Sh. Purshotam Dass as sole proprietor of M/s Ravi Dyeing and Printing and Finishing Works, batal Road, Verka.

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After his death his daughter, Smt. Usha inherited the property and became owner. Petitioners herein purchased the suit property and respondents No.2 to 4 continued to be tenants of the petitioners. The respondent No.5 claimed property to be gifted away by Sh. Purshotam Dass, vide gift deed dated 05.11.1969. Basis thereof, respondent No.5-Sudarshan Sewa Trust filed rent application, which was allowed against respondent No.2-M/s Vishnu Processors Amritsar. The suit property was purchased by the petitioners during pendency thereof. Petitioners filed counter civil suit for declaration to the effect that they are owners of suit property by virtue of two sale deeds bearing No.8051 and 8052 dated 02.09.2008 registered with the office of sub-registrar, Amritsar and on the basis whereof, mutations No.11052 and 11053 were sanctioned in favour of the petitioners.

2.2. Respondent No.1 filed suit that Sudarshan Sewa Trust and respective trustees are owners in possession of property in dispute and sale deed dated 02.09.2008 in favour of petitioners are not binding upon trust; along with suit for permanent injunction. It was admitted by them that trust could not secure mutation on the strength of gift deed dated 05.11.1969 in favour of trust.

2.3. Petitioners came to know that Sudarshan Sewa Trust Amritsar filed an application for withdrawal of amount deposited in the Court for payment to decree-holders, then petitioners came to know about impugned order dated 02.08.2018 (Annexure P-1) passed by learned Additional Civil Judge (Senior Division), Amritsar. As per application, amount of Rs.14,62,000/- stands deposited by M/s Vishnu Processors Amritsar, JD. Respondent No.2 also filed an interpleader suit.

3. Learned counsel for applicant/petitioners would canvass that petitioners are subsequent purchasers of the suit property and when the ownership is in dispute and both the parties i.e., Sukhdev Singh and others (petitioners) and M/s. Sudarshan Sewa Trust (respondent No.5 herein) have filed their respective suits seeking declaration regarding their respective ownership over the property in dispute and both

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these suits are pending, it was not lawful and legal for learned Executing Court to hold that the rent deposited by JDs in the form of payment voucher be refunded to decree holder(s).

4. Heard.

5. The tone, tenor and import of impugned order shows that it was passed in view of pendency of SLP(C) No.24112/2017 before the Apex Court at the relevant time wherein certain interim orders were passed in favour of JDs/respondents No.2 to 4 herein subject to the condition to be complied with, as stated therein. Order dated 08.01.2018 passed in aforesaid case before the Apex Court is as below:

“Issue notice.

In the meanwhile, coercive steps to evict the petitioners may not be taken in Eviction Petition being No.44/2015/10/11/2014 and Rent Appeal No.100 of 2014 provided the petitioners continue to regularly pay the rent at the rate of Rs.17,000/- per month.”

6. *Apropos* above order, learned Court below adjourned the matter *sine die* by observing as below in order dated 02.08.2018:

“3. I have heard the learned counsel for the and have also gone through the file. Admittedly as per the orders of the Hon'ble Supreme Court brought on record, the trial court has been restrained from dispossessing the JD's from the suit property by use of coercive method. But I am of the considered view that the Hon'ble Apex Court is seized of the matter. The present execution is pending in the trial court and therefore if the JDs are not ready to hand over the peaceful possession of the suit property to the decree holder, the executing court would have to issue warrants of possession and on its obstruction the warrants of possession could be executed with the help of police and that would amount to coercive method. Therefore, the orders of the Hon'ble Supreme Court in effect would amount to stay of the present execution. Therefore, the present execution is adjourned sine die and would be taken up as and when the matter is finally adjudicated by the Hon'ble Supreme Court. However, it is made clear that the rent deposited by JDs in the form of payment voucher be refunded to the Decree Holder.”

7. Vide orders dated 06.10.2017 and 08.01.2018, Apex Court directed JD Vishnu Processors to continue to deposit arrears of rent at the rate of Rs.17,000/- per month with decree holder and no coercive method for dispossessing them be used.

When matter is taken up for hearing today, at the outset, learned counsel for respondents No.1 and 5 submits that during interregnum, SLP filed by JDs/

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respondents No.2 to 4 herein has been dismissed vide order dated 24.09.2019 in the following terms:

“We find no reason to entertain this special leave petition, which is, accordingly, dismissed. Pending applications shall stand disposed of.”

- 8. In view of the aforesaid, there is nothing for this Court to adjudicate since rights of the parties have already been finally decided upon dismissal of the SLP *ibid.*
- 9. Dismissed.
- 10. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

May 10, 2023
mahavir

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No