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

CR-1447-2023 (O&M)

Date of Decision: 20.03.2023

Kavi Raj Malik

....Petitioner

Versus

Amar Singh (since deceased) Through LR's and othersRespondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Puneet Sharma, Advocate
for petitioner.

ARUN MONGA, J. (ORAL)

Petition herein is for seeking directions to Ld. Additional Civil Judge (Sr. Division), Jalandhar for expeditious disposal of application (Annexure P-1) pending for 24.03.2023, moved by applicants (petitioner and pro forma respondents No.3 to 5) for restitution of possession of property and further for granting *mesne* profits @ Rs.20,000/- per month till the time possession is handed over to applicants.

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

2.1. Petitioner is aggrieved on account of fraud played by respondents No.1 and 2, who concealed the true facts in execution proceedings as well as for procuring an *ex parte* decree dated 22.07.2011 of the main suit. The petitioner along with *pro forma* respondents No.3 to 5 were not party either in the suit giving rise to decree dated 22.07.2011 or the execution proceedings. Petitioner along with pro forma respondents are *bona fide* purchaser of the property and have had uninterrupted possession since 14.09.2007 from respondent No.2. Said respondent No.2/Surender Pal purchased property in question vide sale deed dated 14.09.2005

pursuant to order dated 08.09.2005 of Ld. Civil Court. Petitioner along with *pro forma* respondents purchased the said property from said Surender Pal and there was no dispute at all. The said purchase was *bona fide*. Petitioner along with *pro forma* respondents became aware of the litigation *inter se* respondents No.1 & 2 only on 24.07.2018 when the name on display board affixed on the wall of disputed premises was removed. On making enquiries, it was revealed by the neighbours that some persons came and removed the name plate and pasted an order of execution on the door of petitioner. The said execution was the result of *ex parte* order dated 01.09.2016. However, no notice was ever sent to petitioner or respondents No.3 to 5.

2.2. On making further enquiries by petitioner, it was revealed that the premises was originally owned by one Amar Singh, who had entered into an agreement to sell with respondent No.2. Said respondent No.2 filed suit for specific performance, which was decreed and he filed an execution. Vide order dated 31.08.2005, the Court appointed Local Commissioner for execution and registration of sale deed, which was executed and registered on 14.09.2005. Consequently, the possession of the said demised premises was also delivered to respondent No.2. On the basis of aforesaid registered sale deed dated 14.09.2005, particularly the same having been executed by the Local Commissioner appointed by the Court, petitioner purchased the property from Surender Pal -respondent No.2 vide registered sale deed dated 14.09.2007. Petitioner paid sale consideration of Rs.15,50,000/- and became absolute owner after the payment of sale consideration. Possession was also handed over and the petitioner since then had been residing in the said premises. However, petitioner though being the owner, was still not made the party to any of the litigation *inter se* respondent No.2-

Surender Pal and respondents No.3 to 5 and subsequent proceedings which were conducted at the back and wholly without knowledge of the petitioner.

2.3. Clandestinely, at the back of petitioner and on the strength of an *ex parte* order, possession of the demised premises was taken from petitioner in an illegal manner by the abuse of process of law. In furtherance of the above, petitioner was constrained to file the application for restitution of property and *mesne* profits, as mentioned above.

3. Given the nature of order being passed, there is no necessity to issue notice to respondents, as no legal prejudice would be caused to them. Notice to respondents is thus dispensed with.

4. Heard.

5. Ordinarily this Court would not have interfered in the matter. However, given the age of petitioner, who is a senior citizen of 77 years and seeking restitution of possession of property in question and *mesne* profits, but owing to delay in disposal of his application, he is rendered completely remediless.

6. Petition is thus disposed of with an expectation that Ld. Executing Court will decide the pending application of petitioner without granting any unnecessary adjournments. However, this order shall not be construed to mean that the application has to be decided in a time bound manner as it would be subject to discretion of Ld. Executing Court to further grant opportunity in case it is found necessary depending upon exigency of work before it.

7. Pending civil miscellaneous application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

March 20, 2023
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No