

CR-3952 of 2023

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

CR-3952 of 2023
Reserved on: 19.07.2023
Pronounced on: 09.08.2023

Kidcare Child Hospital and another

.....Petitioners

vs.

Smt. Sudha Bansal

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by:

Mr. Surinder Gandhi, Advocate,
for the petitioners.

NAMIT KUMAR, J.

1. Instant revision petition has been filed by the petitioners under Article 227 of the Constitution of India challenging the order dated 17.05.2023 passed by Rent Controller, Kalka, whereby application filed by them for stay of further proceedings till the decision of title of the property between the same parties, has been dismissed.

2. Brief facts leading to the present revision petition are that property No.736/1, Ahata Murari Lal, Kalka consisting of first floor and second floor was rented out in favour of petitioner No.2 Dr. Dinesh Kumar Sharma, by the original owner Sh. Sadhu Ram Mittal, wayback in the year 1983. After the death of Sh. Sadhu Ram Mittal, his legal heirs sold the property in question to the respondent herein vide registered sale deed dated 25.07.2019. In July 2021, petitioner No.2 filed a suit for pre-emption against respondent as regards sale deed dated 25.07.2019, claiming

CR-3952 of 2023

himself to be owner in occupation of the suit property. Simultaneously, during the same period, respondent filed an eviction petition against the petitioners. In the eviction petition, petitioners moved an application for staying the further proceedings till the decision of civil suit for pre-emption filed at their instance. The Rent Controller vide impugned order dated 17.05.2023 dismissed the application filed by the petitioners. The said order has been challenged in this revision petition.

3. Learned counsel for the petitioners contended that once the ownership of the property was being claimed at their instance in the suit for pre-emption, pending the said suit, the learned Rent Controller should have allowed the application and stayed the proceedings in the rent petition till the decision of the suit. Learned counsel submitted that as the issue involved in both the proceedings was directly and substantially the same, the learned Rent Controller was under an obligation to stay its hand till the final adjudication of the previously instituted suit between the same parties.

4. I have heard learned counsel for the petitioners and perused the record.

5. It is pertinent to mention here that earlier also petitioners moved similar application qua property in dispute under Section 10 read with Section 151 CPC for staying the further proceedings before the Rent Controller, which was dismissed by the Rent Controller vide order dated 02.08.2022. Against the said order of the Rent Controller, petitioners filed Revision Petition being CR-4254 of 2022, which was dismissed by a Coordinate Bench of this Court vide order dated 10.10.2022 by observing as under: -

CR-3952 of 2023

“On a bare reading of Section 10 CPC, it can be traced out that the same can only be invoked in case, the two separate proceedings in which the matter in issue is said to be directly and substantially be same, must arise out of two separate civil suits. The language used by the legislature, under Section 10 CPC which is relevant for the purpose of present adjudication are reproduced hereunder:-

“Section 10. Stay of suit:-No court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India have jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.”

Even the heading of the provision makes it more than apparent that the said provision is applicable to suits only and an application can be filed in a pending suit for staying the proceedings in case the matter in issue involved therein is directly and substantially an issue in a previously instituted suit between the same parties.

In the present case, the petitioners have moved an application under Section 10 CPC, in an eviction petition pending before the learned Rent Controller, filed under the Haryana Urban (Control of Rent and Eviction) Act, 1973, and the same not being a suit, the learned Rent Controller committed no error of law while declining the same.

*In this regard, I find support from the case titled as **National Institute of Mental Health & Neuro Sciences Vs. C. Parameshwara, (2005) 2 SCC 256**, relied upon by the*

CR-3952 of 2023

learned Rent Controller in its impugned order. Relevant para 10 of the same is reproduced hereunder:-

“10. As stated above, Section 0 CPC is referable to a suit instituted in a civil Court. The proceedings before the Labour Court cannot be equated with the proceedings before the Civil Court. They are not the Courts of concurrent jurisdiction. In the circumstances, Section 10 CPC has no applicable to the facts of this case.”

*In the facts and circumstances of the present case, I also find support from the reasoning recorded by the Hon’ble Supreme Court in **Radha Devi Vs. Deep Narayan Mandal and others, (2003) 11 SCC 759** and relevant para 4 of the same is reproduced as under:-*

“4. After we have heard the learned counsel for the parties, we are of the view that the Bihar Rent Act is a special Act providing for speedy disposal of eviction suit on certain grounds enumerated therein. Under the said Act eviction suit is required to be tried under summary procedure provided under the Act. To succeed in the eviction suit under the Bihar Rent Act the landlord is required to prove contract of tenancy between her and the tenant and also the ground on which the eviction is sought. In such a suit the Rent Court is not required to go into the serious question of title otherwise the purpose of the Act would stand frustrated. In the aforesaid view of the matter, we are of the view that the courts below were not justified in staying the proceedings in the eviction suit.”

Be that as it may, the entire procedure as laid down under the provisions of Code of Civil Procedure cannot be made applicable to the eviction proceedings pending under the Rent Act which in itself is a special Code. Besides vesting of power to summon and to enforce attendance of witnesses as well as

CR-3952 of 2023

execution of orders with the authorities under the Rent Act as per Sections 16 and 18 of the Act of 1973, the rest of the procedure has to be derived by the authorities in consonance with the Rules of natural justice. More than that, the issue involved in the civil suit filed at the instance of petitioner No.2 against respondent, relates to ownership/vesting of the property in question which even otherwise, does not fall within the domain of the learned Rent Controller which is empowered only to adjudicate rights arising out of landlord-tenant relationship and not the title inter-se. On the other hand, the rent proceedings cannot be ordered to be stayed as the learned Rent Controller is having no jurisdiction to grant the relief of ownership/ title as claimed by petitioner No.2 in the previously instituted suit. Therefore, once the mandatory condition as envisaged under Section 10 CPC to the effect that the Court in which subsequent proceeding/ suit was initiated must be having jurisdiction to grant the relief claimed in the previous suit, are not made out in the facts and circumstances of the present case. Thus, the plea raised by the petitioners to the effect that the matter in issue involved in the eviction petition is also directly and substantially an issue in the previously instituted suit by petitioner No.2 against respondent, is liable to be rejected.”

6. In view of the above, it appears that petitioners only want to delay the proceedings. I do not find any illegality or perversity in the impugned order. Hence, the revision petition stands dismissed.

09.08.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No