

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(101+250)

CM No.2976-CII of 2020 in/and
CR No.4809 of 2019 (O&M)
Date of Decision : 23.03.2023

Sanjeev Kumar

...Petitioner

Versus

Gurcharan Lal and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Namit Khurana, Advocate for the petitioner.

Harsimran Singh Sethi J. (Oral)

CM No.2976-CII of 2020

Application is allowed.

Documents are taken on record.

CR No.4809 of 2019

The present Civil Revision petition has been filed challenging the order dated 30.07.2019 (Annexure P-5) by which, the application filed by the petitioner for rejection of plaint has been dismissed.

Learned counsel for the petitioner argues that though it is a conceded position that the possession of the premises in question was delivered to the petitioner as a tenant but in the meantime, keeping in

view the settlement between the parties, there was an agreement to sell of the property in question dated 05.10.2016 and keeping in view the said agreement, the respondent-landlord cannot file the eviction petition especially when, the petitioner has filed a suit for specific performance of the agreement to sell according to which, the ownership of the premises in question is being claimed.

Learned counsel for the petitioner further submits that keeping in view the settled principles of law settled by Hon'ble Supreme Court of India in **R.Kanthimathi and another Vs. Beatrice Xavier (MRS)**, (2000) 9, SCC 339, the suit filed by the landlord for eviction is not maintainable.

Certain facts may be noticed for the correct appreciation of the controversy in hand.

It is a conceded fact that the premises in question was handed over to the petitioner as a tenant. It is also a conceded position that as of now, he has not been declared an owner as there is no sale deed in favour of the petitioner qua the premises in question. Further, it is also a matter of fact that as per the agreement to sell, till the sale deed is executed, the petitioner will keep on paying the rent of the premises in question and in case, the sale deed could not be executed due to the fault of the petitioner, the earnest money given will be forfeited. Further, it may be noticed that as per the said agreement to sell in question if the landlord fails to comply with the terms and conditions of the agreement, the landlord will not be able to claim the rent of the premises in question.

The arguments being raised by learned counsel for the petitioner is that after the agreement to sell, he is no longer a tenant and acquires the status of an owner. The said proposition being put forward by the petitioner so as to pray that the eviction petition filed by the petitioner is liable to be returned even without a trial, cannot be accepted. The default, due to which, the sale deed could not be registered, is the subject matter of the suit filed by the petitioner seeking the specific performance of the agreement in question.

Learned counsel for the petitioner very fairly conceded that in the said suit, the stand of the landlord is that sale deed could not be accepted due to the default on behalf of the petitioner herein. Once, till the sale deed is to be executed and the petitioner becomes the owner, it cannot be said that the suit filed by the landlord is not permissible. Whether the landlord succeeds in the suit or not will depend upon the evidence of the case but the prayer of the petitioner that the rent petition filed by the landlord is not maintainable, cannot be accepted.

Further, the judgment in **R.Kanthimathi's case (supra)** is not applicable in the facts and circumstances of the present case for the reason that the present application is related to the return of the rent petition without being adjudicated, which was not the issue in **R.Kanthimathi's case (supra)**. Keeping in view the evidence, which comes on record, the applicability of the judgment in **R.Kanthimathi's case** will be adjudicated but the said judgment cannot be treated as applicable at the outset without there being any evidence on record to support the fact that the default in getting the sale deed registered is upon the landlord and not upon the petitioner.

Keeping in view the above, no ground is made out for interference by this Court in the present Civil Revision petition and the same is dismissed.

March 23, 2023
jt

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No