

114.

2023:PHHC:144072

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

CR-6491-2023

Date of decision: 08.11.2023

NARENDER @ NARENDER YADAV

.... Petitioner

Versus

HARYANA WAKF BOARD AND ORS

.... Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Prashant Singh Chauhan, Advocate,
for the petitioner.

Mr. Ghulam Nabi Malik, Advocate,
for respondent No.1.

Mr. Rehan Chaudhary, Advocate,
for respondent No.2-Punjab National Bank.

GURBIR SINGH, J.

1. Prayer in this revision petition filed under Article 227 of the Constitution of India is for setting aside the order dated 19.09.2023 passed by learned Civil Judge (Senior Division), Rewari whereby warrant of possession of the suit property has been issued. Direction has also been sought to the Executing Court to keep the proceedings in abeyance till the decision of the application filed by the petitioner and respondent No.3-JDs for setting aside the ex-parte judgment and decree dated 14.01.2020 and ex-parte order dated 15.12.2018.

2. Briefly stated, plaintiff-Haryana Wakf Board, respondent No.1, filed a suit for ejectment and recovery against the petitioner and proforma

respondent No.3, on the ground that they had violated the terms and conditions of lease agreement. Vide order dated 15.12.2018, they were proceeded against ex-parte and accordingly, ex-parte judgment and decree dated 14.01.2020 was passed vide which the JDs were directed to handover the possession of the property in dispute to the plaintiff-respondent No.1-Haryana Wakf Board. Thereafter, execution was filed by the plaintiff-Decree Holder-respondent No.1. The JDs have also filed an application dated 20.10.2023 (Annexure P-6) under Order 9 Rule 13 read with Section 151 CPC for setting aside the ex-parte judgment and decree dated 14.01.2020 and also the ex-parte order dated 15.12.2018, *inter alia*, on the ground that after recording the plaintiff's evidence, the case was fixed for respondents' evidence. The case was transferred to the court of learned ADJ, Gurugram as Wakf Tribunal, from where the JDs did not receive any intimation of fixation of date of hearing and thereafter, the case was returned to the competent court of jurisdiction at Rewari and in this regard, reference was also sent to the District Judge, Rewari. The case was ordered to be restored at its original number in the absence of parties. They were proceeded against ex-parte and decree was passed.

3. It is submitted that the application (Annexure P-6) for setting aside the ex-parte judgment and decree dated 14.01.2020 and also the ex-parte order dated 15.12.2018 is pending but respondent No.1-plaintiff has already moved an application for execution of the ex-parte judgment and decree dated 14.01.2020 and the learned Executing Court has issued warrant of possession of the property comprised in the decree.

4. Learned counsel for the petitioner-defendant No.1/Judgment Debtor submits that the petitioner along with respondent No.3-defendant No.2-JD are in settled possession of the suit property. It is submitted that judgment and decree dated 14.01.2020 is likely to be set aside. If possession of property is handed over to respondent No.1-plaintiff, the petitioner along with pro forma respondent No.3 would suffer irreparable loss and injury.

5. On the other hand, learned counsel appearing on behalf of the respondent No.1 has opposed the petition. It is submitted that well reasoned judgment and decree has been passed. Notice was duly served upon the father of the petitioner, who received the summons. It is further submitted that the JDs have failed to pay the rent and are illegally occupying the property in question. The application for setting aside the judgment and decree is likely to be dismissed.

6. At this stage, learned counsel for the petitioner-JD submits that the petitioner is ready to pay the entire arrears of rent without any delay. His possession be protected till disposal of appeal. Reliance is placed on the judgments of this Court in ***Davinder Pal Singh and another Versus Narinder Pal Singh and others, 2016(3) R.C.R. (Civil) 194*** and ***Bijender Singh Versus Kotak Mahindra Prime Limited and another, 2019(1) PLR 504.***

7. I have heard the submissions of learned counsel for the parties.

8. It is not disputed that the application dated 20.10.2023 (Annexure P-6) moved by the petitioner-JD under Order 9 Rule 13 read with Section 151 CPC for setting aside the ex-parte judgment and decree dated 14.01.2020 and also for setting aside the ex-parte order dated 15.12.2018 is

still pending. It will not be appropriate that without getting the decision on the said application, said ex-parte judgment and decree is executed and the petitioner along with proforma respondent No.3-JDs are ejected from the possession of the property in dispute.

9. So, the warrant of possession issued by the learned Executing Court shall remain stayed till the disposal of the application (Annexure P-6) but subject to the petitioner's paying entire arrears of rent till October, 2023 on or before 16.11.2023 to respondent No.1-Haryana Wakf Board.

10. In case of default of payment of arrears of rent, the order of stay of warrant of possession shall automatically stand vacated.

11. It is expected that the learned trial Court shall dispose of the application filed for setting aside the ex-parte judgment and decree dated 14.01.2020 and the ex-parte order dated 15.12.2018 expeditiously without any delay.

12. Present petition stands disposed of accordingly.

(GURBIR SINGH)
JUDGE

November 8, 2023

sanjeev

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No