

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No. 6727 of 2023(O&M)
Date of Decision: 08.11.2023

Gaurav Nirwania

...Petitioner

Versus

Vaneet Kumar Pathak @ Jayant Pathak

...Respondent

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. Pankaj Katia, Advocate
For the petitioner.

KARAMJIT SINGH, J.

1. The present petition has been filed by the petitioner/ plaintiff seeking setting aside of the impugned order dated 11.07.2023 (Annexure P-11) passed by the Court of Additional District Judge, SAS Nagar, Mohali and order dated 13.10.2023 (Annexure P-15) passed by the Court of learned Civil Judge (Jr.Divn.), Dera Bassi.

2. The brief facts of the case are that petitioner filed suit for permanent injunction against the respondent to protect his possession over the suit property which was taken on lease by the petitioner from respondent. Along with the suit the petitioner filed an application under Order 39 Rules 1 and 2 CPC for grant of interim relief. The suit as well as the injunction application were contested by the respondent.

3. The counsel for the respondent made statement before the learned trial Court that respondent would not forcibly evict the petitioner

from the suit property except in due course of law and that respondent has already filed an eviction petition against the petitioner. On the basis of the aforesaid statement made by counsel for the respondent, the stay application filed by the petitioner was allowed by the learned trial Court vide order dated 04.10.2022. Thereafter, respondent filed appeal against the aforesaid order dated 04.10.2022 and the same was decided by the First Appellate Court vide impugned order dated 11.07.2023, in the following terms:-

“10. Perusal of grounds of appeal show that appellant has not mentioned as to under which of the circumstances the statement was given by his counsel but has pleaded that ld. Lower Court has ignored the registered lease deed where area is mentioned as 500 Sq. Yards only and 2 notices issued by him to the plaintiff regarding expiry of lease deed. However, since the impugned order was passed on the basis of statement of counsel for defendant and it is not the case of defendant, if statement of his counsel is not properly appreciated, no ground to interfere with the order in this appeal is made out. Ld. Counsel for the appellant argued that under the guise of present order, the plaintiff is occupying the entire premises and even not paying the rent. The plaintiff has himself admitted that premises were taken on rent at the rate of Rs.50,000/- per month. Therefore, it is just and equitable that plaintiff should regularly pay the rent and arrears in order to secure the relief to temporary injunction. In view of all these facts and my observations as discusses above, appeal filed by the appellant/ defendant Vivek Pathak @ Jayant Pathak is hereby dismissed subject to condition that defendant will pay the arrears of rent within one month from today and will regularly pay the rent as per terms of lease deed, failing which appeal will be deemed to be allowed. With these observations, appeal stands dismissed. However, these observations of mine shall have not bearing on merits of case. Both the parties are directed to appear before the learned lower Court on 27.07.2023 at 10:00 a.m. for further

proceedings. Lower Court record along with copy of this order be sent to the learned lower Court well before the date fixed. Present appeal file be consigned to the record room.”

4. On the basis of the aforesaid order dated 11.07.2023 the learned trial Court passed impugned order dated 13.10.2023 (Annexure P-15) and vacated the stay order on the ground that the petitioner failed to comply with the directions given by the Appellate Court dated 11.07.2023 as he failed to clear the arrears of rent for months of August to October, 2023.

5. The petitioner being aggrieved by aforesaid orders, Annexures P-11 and P-15 has filed the present revision petition.

6. The counsel for the petitioner while assailing the impugned order dated 11.07.2023, *inter alia*, submits that the matter with regard to arrears of rent or its payment was not subject matter of the appeal which was filed by the respondent before the Court of Additional District Judge, SAS Nagar, Mohali against order dated 04.10.2022 passed by the learned trial Court, which was decided on 11.07.2023 by the said Appellate Court. It is further contended that in the given circumstances the Court of Additional District Judge, SAS Nagar unnecessarily gave directions to the petitioner to make the payment of arrears of rent and in future to pay the rent regularly to the respondent with regard to suit property and thus the said order dated 11.07.2023 is not sustainable to the extent stated above.

7. It is further submitted that the order dated 13.10.2023 passed by the learned trial Court which is based on the aforesaid directions given by the First Appellate Court vide order dated 11.07.2023, also deserves to be set aside.

8. I have considered the submissions made by counsel for the petitioner.

9. Admittedly, the learned trial Court allowed the injunction application filed by the petitioner on the basis of concessional statement made by counsel for respondent. So, the First Appellate Court was having limited scope to entertain the appeal against the aforesaid order dated 04.10.2022 passed by the learned trial Court. Further, the only issue involved in the suit filed by the petitioner is as to whether he is in lawful possession of the suit property and could not be dispossessed except in due course of law. The issue with regard to arrears of rent or its payment was not before the First Appellate Court and thus, the learned First Appellate Court fell into error and wrongly gave directions to the petitioner to pay the rent of the suit property to the respondent as per terms of the lease deed. Admittedly, the respondent has already filed eviction petition (Annexure P-5) against the petitioner under Punjab Rent Act, 1995, wherein the question with regard to arrears of rent and its payment will be decided by the Court concerned. Thus, the impugned order dated 11.07.2023 being illegal is hereby set aside. Consequently, the order dated 13.10.2023 (Annexure P-15) passed by the learned trial Court whereby the injunction order has been vacated, is also hereby quashed.

10. In light of the above, present petition is allowed and without expressing any opinion on the merits of the case and the matter is remanded back to the Court of Additional District Judge, SAS Nagar, Mohali to decide the civil miscellaneous appeal, afresh, in accordance with law after giving opportunity of hearing to both the parties, in an expeditious manner. The petitioner is directed to appear before the said Court on 06.12.2023.

11. Keeping in view the nature of order being passed, no notice is required to be issued to the respondent. However, if he feel dis-satisfied with this order, he may move an application to recall the same.

08.11.2023

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(KARAMJIT SINGH)
JUDGE

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