

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No.266-2023 (O&M)

Date of Decision: 16.01.2023

Vijay Kumar Gupta & Others

..... Petitioners

Versus

M/s Peg Talk's Beer Bar & Restaurant & Another

..... Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Nitish Garg, Advocate for the petitioners.

Nidhi Gupta, J.

CM-767-CII-2023

This is an application under Section 151 CPC for exemption from filing certified copies of Annexure P1, P2 and P4 and true typed copies of Annexure P2 to P5 and placing on record certified copies of Annexure P3 and P5 and true typed copy of Annexure P1 and photostat copies of Annexure P2 and P4. The application is allowed subject to just all exceptions.

MAIN CASE

Prayer in the present Revision Petition is for setting aside order dated 18.11.2022 (Annexure P5) vide which application filed by the petitioners/plaintiffs under Order 38 Rule 5 read with Section 151 CPC praying for arrest of the respondent/defendant and attachment of his properties, has been dismissed.

It is submitted on behalf of the petitioners that petitioners had earlier filed petition under Section 13 of the East Punjab

Urban Rent Restriction Act, 1949 wherein respondents were proceeded against ex parte and vide order dated 25.08.2022 (Annexure P1) passed by learned Rent Controller, Chandigarh, eviction of respondents was directed from the premises in question. Thereafter, in October 2022, the petitioners/plaintiffs filed present Civil Suit for total recovery of Rs.60,05,187/- as rent from the respondents, along with present application under Order 38 read with Section 151 CPC. It is submitted that it is the apprehension of the petitioners/plaintiffs that the respondent is trying to dispose of his property with an intention to delay/defeat the petitioners' claim, and even advertisement (Annexure P4) to this effect has been taken out by the respondents. It is accordingly submitted that the impugned order dated 18.11.2022 be set aside and application filed by the petitioners under Order 38 Rule 5 CPC attaching the property of the respondents be allowed.

I have heard learned counsel for the petitioners.

A perusal of the record shows that present Civil Suit was filed by the petitioners on 18.10.2022 for recovery of rent from October 2019 till October 2022 along with interest @ 18% from October 2019 till today. Thereafter, impugned order dated 18.11.2022 records that notice issued to respondent/defendant No.1 has been received back unserved and notice issued to respondent/defendant No.2 was received back with the report of refusal. Accordingly, the learned trial Court vide impugned order dated 18.11.2022 directed issuance of fresh notice in respect of respondent No. 1, and further directed that respondent No. 2/defendant No. 2 be served through *munadi* and affixation.

As regards the petitioner’s application under Order 38 Rule 5 CPC/prayer for attachment of the property of the respondent, I find no error in the reasoning advanced by the learned trial Court in the impugned order that no order can be passed in the petitioners’ said application, in view of the fact that the respondents were yet to be served. Even now, upon a query put to the learned counsel appearing on behalf of the petitioners that notice be issued in the present Revision Petition, his reply is that property of the respondents should be attached. It is clear that property of the respondents cannot be attached without prior notice to them, and without proper adjudication upon the matter. Accordingly, present Revision Petition stands dismissed.

Pending application(s) if any also stand(s) disposed of.

16.01.2023
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No