

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.122

Case No. : C. R. No. 7652 of 2023

Date of Decision : December 22, 2023

Montu Mandal		Petitioner
vs.		
Lalit Malik		Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

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Present : Mr. Gaurav Singla, Advocate
for the petitioner.

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GURBIR SINGH, J. :

1. Challenge in the present revision petition is to the order dated 05.10.2023 (Annexure P-5), passed by learned Civil Judge (Junior Division), Faridabad, vide which objections filed by the petitioner/judgment-debtor (hereinafter referred to as – JD) have been dismissed and warrant of possession has been ordered to be issued against the JD.

2. The brief facts, as culled out from the paper book, are that the Rent Petition filed by the respondent/decreed-holder (hereinafter referred to as – DH) was allowed vide judgment dated 23.12.2022. DH was held entitled for possession of the premises in question and JD was directed to vacate the premises within a period of two months from the date of judgment and hand over the peaceful vacant possession to the DH but the possession was not handed over to the DH even after expiry of two months.

Accordingly, prayer was made before the Court to issue warrant of

possession.

3. Learned counsel for the petitioner/JD contends that the JD filed objections on the ground that the Execution Petition filed by DH was not maintainable as the DH has no cause of action or locus standi to file the Execution Petition, with further allegations that DH has suppressed true and material facts from the Court and has not come to the Court with clean hands. He further alleged that DH is neither the owner nor in possession of the premises in question whereas JD is owner in possession over the premises in question, which is sole house of JD. It was further alleged that the Execution Petition has been filed just to harass the JD. It is, therefore, prayed that the operation of impugned order dated 05.10.2023 (Annexure P-5) be stayed.

4. I have heard learned counsel for the petitioner and perused the case file.

5. A bare perusal of the record shows that the Rent Petition filed by the respondent/DH was allowed vide judgment dated 23.12.2022, passed by the learned Rent Controller and JD was give two months' time to hand over the possession of the premises in question but JD failed to do so. Rather, JD preferred an appeal against the said judgment, which is still pending before the learned Appellate Authority. No stay or interim order has been passed in the appeal.

6. Perusal of impugned order further reveals that the learned Court below has specifically observed therein that mere filing of an appeal cannot operate as stay by reason of Rule 5 Order 41 CPC. Therefore, objections filed by the JD were dismissed on merits by the Court below. Accordingly,

as a result thereof, warrant of possession was issued with regard to the premises in question. So, the impugned order was completely in accordance with law and does not warrant any interference by this Court.

7. In view of the aforesaid, since the appeal filed by the JD is pending before the Appellate Authority and there is no stay or interim order passed in favour of the JD, so, the petitioner/JD is required to make request to the learned Appellate Authority to dispose of the application, if any, for grant of stay regarding operation of the impugned order, as per the remedy available to the petitioner, in accordance with law.

8. Accordingly, I do not find any merit in the present revision petition and the same is dismissed in limine.

9. Pending applications, if any, shall stand disposed of along with this judgment.

December 22, 2023

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(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.