



IN THE HIGH CO URT OF PUNJAB AND HARYANA AT CHANDIGARH

143

RA-CR-49-2024
IN CR-606-2024
Date of Decision : 12.08.2024

Yuvraj SinghPetitioner

VERSUS

Harninder Singh and AnotherRespondents

CORAM : HON’BLE MRS. JUSTICE ALKA SARIN

Present : Dr. Naresh Kaushik, Advocate
for the review applicant-petitioner

ALKA SARIN, J. (Oral)

1. Present review application has been filed seeking review of the order dated 05.02.2024 vide which the petition being CR-606-2024 was disposed off.
2. Brief facts relevant to the present *lis* are that the revision petition (CR-606-2024) was filed challenging the order dated 06.01.2024 passed by the Appellate Authority whereby mesne profits were fixed and the review applicant-petitioner was directed to pay the same within a period of one month.
3. On 05.02.2024 Mr. Divanshu Jain, Advocate had appeared on behalf of the review applicant-petitioner while Mr. Anuj Kumar Sharma, Advocate had appeared on behalf of the respondent and the following order was passed :

“1. The present civil revision petition has been preferred challenging the impugned order dated

06.01.2024 whereby mesne profits have been fixed by the Appellate Authority and the petitioner has been directed to pay the same within a period of one month.

2. Learned counsel for the petitioner has relied upon the judgments of the Hon'ble Supreme Court in the case of M/s Atma Ram Properties (P) Ltd. Vs. M/s Federal Motors Pvt. Ltd. [2005 (1) RCR (Civil) 212] and State of Maharashtra & Anr. Vs. M/s Super Max International Pvt. Ltd. & Ors. [2009 (9) SCC 772]. It is further the contention of the learned counsel that the petitioner is willing to deposit the said amount. He, however, prays for one month's time to deposit the same.

3. Per contra, the learned counsel for the respondents has contended that a perfectly reasoned order has been passed by the Appellate Authority which calls no interference.

4. I have heard the learned counsel for the parties.

5. Hon'ble Supreme Court in the case of M/s Super Max International Pvt. Ltd. (supra) has held as under :

“48. Before concluding the decision one more question needs to be addressed: what would be the position if the tenant's appeal/revision is allowed and the eviction decree is set aside? In that event, naturally, the status quo ante would be restored

and the tenant would be entitled to get back all the amounts that he was made to pay in excess of the contractual rent. That being the position, the amount fixed by the court over and above the contractual monthly rent, ordinarily, should not be directed to be paid to the landlord during the pendency of the appeal/revision. The deposited amount, along with the accrued interest, should only be paid after the final disposal to either side depending upon the result of the case. In case for some reason the Court finds it just and expedient that the amount fixed by it should go to the landlord even while the matter is pending, it must be careful to direct payment to the landlord on terms so that in case the final decision goes in favour of the tenant the payment should be made to him without any undue delay or complications.”

6. *This Court in the case of Angoori Devi & Ors. Vs. Smt. Satya Bhama [2016 (5) RCR (Civil) 1043] also held that mesne profits should not be paid to the landlord during the pendency of the appeal/revision unless some special reasons have been shown and the amount should be deposited in a Fixed Deposit/Recurring Deposit.*

7. *In view of the above, the present revision petition is partly allowed. The impugned order is modified to the extent that mesne profits shall be deposited by the petitioner as directed by the Appellate Authority i.e. on or before 10th day of every Calendar month. The amount so deposited shall be invested in an FDR. The petitioner is granted one month's time from today for depositing the arrears of mesne profits as calculated by the Appellate Authority. The remaining conditions as imposed by the Appellate Authority shall remain intact.*

8. *Pending applications, if any, also stand disposed off."*

4. Learned counsel for the review applicant-petitioner has not addressed any argument on the maintainability of the present review application by a new counsel. Rather, he has sought to argue the main petition on merits stating that the admitted rent was Rs.3500/- per month.

5. Heard.

6. In the present case the review application has been filed by a counsel who was neither the filing counsel nor the arguing counsel nor was present at the time of passing of the order dated 05.02.2024. A perusal of the order dated 05.02.2024 reveals that the case was decided on the contention raised by counsel for the review applicant-petitioner that the mesne profits are to be deposited and not paid to the landlord. Reliance was placed upon judgments in the cases of **M/s Atma Ram Properties (P) Ltd. Vs. M/s**

Federal Motors Pvt. Ltd. [2005 (1) RCR (Civil) 212] and **State of Maharashtra & Anr. Vs. M/s Super Max International Pvt. Ltd. & Ors. [2009 (9) SCC 772]**. After hearing both the counsel for the parties this Court, relying upon the judgments passed by the Hon'ble Supreme Court in the cases of **Super Max International Pvt. Ltd. (supra)** and **Angoori Devi & Ors. Vs. Smt. Satya Bhama [2016 (5) RCR (Civil) 1043]**, directed that the mesne profits be deposited by the review applicant-petitioner as directed by the Appellate Authority on or before 10th day of every calendar month. The amount so deposited was to be invested in an FDR and further the review applicant-petitioner was granted one month's time for depositing the arrears of mesne profits as calculated by the Appellate Authority. It was not a case where the case was disposed off on a statement suffered by the counsel, rather the case was argued on merits.

7. Further still, Hon'ble Supreme Court has repeatedly deprecated the conduct of the parties of changing their counsel and filing review petitions. Support qua the same can be drawn from the judgment of the Supreme Court passed in **T.N. Electricity Board & Anr. Vs. N. Raju Reddiar & Anr. [(1997) 9 SCC 736]** wherein it has been held as under :

“It is a sad spectacle that new practice unbecoming of worthy and conducive to the profession is cropping up. Mr. Mariaputham, Advocate-on-Record had filed vakalatnama for the petitioner-respondent when the special leave petition was filed. After the matter was disposed of, Mr. V. Balachandran, Advocate had filed a

petition for review. That was also dismissed by this Court on April 24, 1996. Yet another advocate, Mr. S.U.K. Sagar, has now been engaged to file the present application styled as "application for clarification", on the specious plea that the order is not clear and unambiguous. When an appeal/special leave petition is dismissed, except in rare cases where error of law or fact is apparent on the record, no review can be filed; that too by the advocate on record who neither appeared nor was party in the main case. It is salutary to not that Court spends valuable time in deciding a case. Review petition is not, and should not be, an attempt for hearing the matter again on merits. Unfortunately, it has become, in recent time, a practice to file such review petitions as a routine; that too, with change of counsel, without obtaining consent of the advocate on record at earlier stage. This is not conducive to healthy practice of the Bar which has the responsibility to maintain the salutary practice of profession. In Review Petition No.2670/96 in CA No.1867/92, a Bench of three Judges to which one of us, K. Ramaswamy,J., was a member, has held as under:

“The record of the appeal indicates that Shri Sudarsh Menon was heard and decided on merits.

The Review Petition has been filed by Shri Prabir Chowdhury who was neither an arguing counsel when the appeal was heard nor was he present at the time of arguments. It is unknown on what basis he has written the grounds in the Review Petition as if it is a rehearing of an appeal against our order. He did not confine to the scope of review. It would be not in the interest of the profession to permit such practice. That part, he has not obtained "No Objection Certificate" from the Advocate-on-Record in the appeal, in spite of the fact that Registry had informed him of the requirement for doing so. Filing of the "No Objection Certificate" would be the basis for him to come on record. Otherwise, the Advocate-on-Record is answerable to the Court. The failure to obtain the "No Objection Certificate" from the erstwhile counsel has disentitled him to file the Review Petition. Even otherwise, the Review Petition has no merits. It is an attempt to reargue the matter on merits. On these grounds, we dismiss the Review Petition."

Once the petition for review is dismissed, no application for clarification should be filed, much less with the

change of the advocate-on-record. This practice of changing the advocates and filing repeated petitions should be deprecated with heavy had for purity of administration of law and salutary and healthy practice.”

8. Learned counsel for the review applicant-petitioner has not addressed any argument qua the maintainability of the present application by a new counsel who was neither the filing counsel nor the arguing counsel nor was present at the time of passing of the order dated 05.02.2024. By filing the present review application the review applicant-petitioner is wanting to re-argue and reagitate the matter, which cannot be permitted in law. The case was argued on merits and was decided on merits and hence no ground is made out to entertain the present review application.

9. In view of the above, I do not find any merit in the present review application which is dismissed with exemplary costs of Rs.20,000/- to be deposited with the Chandigarh Legal Services Authority. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

12.08.2024
jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO