



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

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**CR-5539 of 2024 (O&M)
Decided on: 25.09.2024**

Sham Lal @ Sham Lal Gujjar

...Petitioner

Versus

Kamlesh Rani

...Respondent

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. Kanwar Abhay Singh, Advocate
for the petitioner.

RITU TAGORE, J.

1. This revision petition is directed against the orders dated 21.08.2024 (Annexure P-13) and 11.09.2024 (Annexure P-14), passed by Civil Judge (Junior Division), Ludhiana in Execution petition No. 2055 of 2024.

2. Learned counsel, representing the petitioner, submits that property bearing plot No.13, admeasuring 500 square yards, khasra No.8//5, 6, 7//1, 10, 11/1, khata No.366/377, at Abadi Dairy Complex, Haibowal Khurd, Ludhiana, was allotted to petitioner's father-Prem Chand, who had set up a milk dairy in the property in question. It is stated that after the death of petitioner's father on 31.10.2003, the said plot was inherited by the petitioner, his mother Gurmeet Kaur and his sister Rekha in equal shares.



3. Learned counsel submits that, in order to usurp the plot, the husband of the respondent, who was known to the petitioner, took advantage of illness of the petitioner and fraudulently executed a false sale deed (Annexure P-3) in favour of his wife. He also prepared an undated rent deed (Annexure P-4) between petitioner and the respondent. It is claimed that, based on this forged rent deed (Annexure P-4), the respondent instituted a rent petition (Annexure P-5) against the petitioner.

4. It is further submitted by learned counsel for the petitioner that the learned Rent Controller without appreciating the facts and the evidence in proper manner accepted the Rent petition vide judgment dated 23.10.2023 (Annexure P-6), which has been assailed by the petitioner in the appeal. The learned counsel argues that alongwith the appeal, petitioner also moved an application for stay under order 41 Rule 5 Code of Civil Procedure (hereinafter referred to as 'CPC' (Annexure P-8). The respondent filed an application, seeking *mesne* profits. Thereupon, learned Appellate authority vide order dated 14.02.2024 (Annexure P-9), stayed the operation of the judgment dated 23.10.2023 (Annexure P-6), subject to the payment of arrears of rent and *mesne* profits at the rate of Rs.20,000/- per month.

5. It is stated by learned counsel for the petitioner that the order dated 14.02.2024 (Annexure P-9) was challenged by the petitioner and the revision petition bearing No.CR-2275/2024 (Annexures P-10 and P-11) in this regard is pending for adjudication before this Court for 15.01.2025. Learned counsel submits that respondent filed an Execution petition bearing No.2055 of 2024 (Annexure P-12), for implementation of the order dated 23.10.2023 (Annexure P-6). The warrant of possession has been issued vide



orders dated 21.08.2024 and 11.09.2024 (Annexure P-13 and P-14) against him.

6. Learned counsel for the petitioner contends that the orders dated 21.08.2024 and 11.09.2024 (Annexure P-13 and P-14) are arbitrary and are based on conjectures and surmises. The learned Court failed to appreciate the fact that the appeal against the eviction order is already pending before the learned Appellate Authority, Ludhiana, wherein the petitioner has disputed the validity of the ejectment order and has also challenged the rent deed and relationship between him and respondent as landlord and tenant. Learned counsel also contended that the petitioner's mother has also filed a separate civil suit (Annexure P-15), challenging the validity of the sale deed dated 05.07.2006. Furthermore, the demise premises is not exclusively owned by the petitioner as he holds only a 1/3rd share in the rented premises, with other co-sharers, his mother and sister owning and possessing 1/3rd share each. Learned counsel, therefore, submits that issuance of warrant of possession is flawed in the eyes of law. In support of his contentions, learned counsel referred to the authority titled as **'Inder Singh Vs. Piara Singh', 1993 AIR (Punjab and Haryana) 83** and prays that the order be set aside as unsustainable in the eyes of law.

7. I have heard learned counsel for the petitioner and have gone through the paper book.

8. The material facts as narrated above are not in dispute. Admittedly an ejectment order dated 23.10.2023 (Annexure P-6) has been passed against the petitioner, who has preferred an appeal against this ejectment order, which is pending adjudication before the learned Appellate



Authority, Ludhiana. The operation of the order dated 23.10.2023 (Annexure P-6) was stayed by the learned Appellate Authority subject to the deposit of arrears of rent due till 23.10.2023 and continuance of payment of *mesne* profits determined Rs.20,000/- per month by the petitioner. For ready reference, it is desirable to reproduce the impugned order dated 21.08.2024, which reads as under:-

“Report of Ahlma seen. Today Sh. G.P.S. Kahlon Advocate stated that JD preferred an appeal against the order of ejectment by this Hon’ble Court vide order dt 23.10.2023 and the decree holder appeared before the Hon’ble Appellate Court through counsel and filed an application for payment of arrears of rent and mesne profits which was decided by the Court of Dr. Monika Goyal Ld. Appellate Authority and directed the JD to make the payment of arrears of rent at the rate of Rs.17000/- per month w.e. f 01.06.2014 till 23.10.2023 and further to pay the mesne profits to the tune of Rs.20,000/- per month and stayed the impugned order dt 23.10.2023 subject to the appellant depositing all the arrears of rent due till 23.10.2023 and continue to pay mesne profits on 10th of every month. However the JD had not paid even a single penny to the DH of due rent and mesne profits and the same was also reflected in the zimni order dt 27.05.2024 passed by the Court of Sh. Jaswinder Singh Ld. Appellate Authority Ludhiana. Let warrant of possession be issued for 04.09.2024”

9. A perusal of the aforesaid order reveals that the petitioner did not comply with the order dated 14.02.2024. He neither paid the due rent nor the *mesne* profits. Admittedly, there is no stay against the order dated 14.02.2024 in the revision petition. In these circumstances, the equity does not lie in favour of the petitioner, who has not complied with the order of the



learned Appellate Authority, whereby the stay was granted to him subject to the payment of arrears of rent and *mesne* profits. The judicial decision titled **Inder Singh (supra)** is not applicable to the facts of the present case as in the referenced case, the poser before the Hon’ble Division Bench of this Court was ‘whether, the Executing Court is bound to consider the application of a person, in possession, where he was not party to the decree, before he is dispossessed?’. Here in the present case, the third party, namely the mother or the sister of the petitioner, are not before this Court. As noticed above, the petitioner has not complied with the orders, wherein he has not made payment of *mesne* profits and rent. In view of this situation, the learned Executing Court thus has rightly issued the warrants of possession on the basis of the ejectment order dated 23.10.2023 (Annexure P-6).

10. As a sequel to the foregoing discussion, it is held that the learned Executing Court has rightly exercised the jurisdiction that vested in it and the orders do not suffer from any illegality, irregularity, infirmity or perversity so as to warrant any intervention by this Court.

11. Accordingly, the revision petition is, hereby, dismissed.

12. Pending applications, if any, also stands disposed of accordingly.

(RITU TAGORE)
JUDGE

25.09.2024
Rimpal

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