

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****124****CR-6159-2024 (O&M)****Date of Decision : 23.10.2024**

Sandeep Kumar

....Petitioner

VERSUS

Arun Kumar

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Bhupinder Singh Kundra, Advocate for the petitioner.

ALKA SARIN, J. (Oral)

1. Present revision petition has been preferred challenging the order dated 07.09.2024 whereby the application filed by the petitioner under Section 151 of the Code of Civil Procedure, 1908 for eviction/ejectment of the respondent from the shop in question as well as for directing the respondent to pay the rent from April 2021 to 31.12.2023 alongwith future interest @ 12% per annum till its realization as recovery of rent amount of Rs.4,71,744/- alongwith interest @ 9% per annum from January 2020 to March 2021 is pending before this Court.

2. The brief facts relevant to the present *lis* are that the plaintiff-petitioner (landlord) filed a suit for possession by way of ejectment of the defendant-respondent (tenant) from a shop constructed in part of Khasra No.44//24/1(2-0) situated within the revenue limits of village Sialba, Hadbast No.148, Tehsil Kharar and District Mohali and to hand over vacant possession of the said shop to the plaintiff-petitioner and for recovery of Rs.4,71,744/- alongwith interest @ 9% per annum for the period from

January 2020 to March 2021 and further for damages @ Rs.50,000/- per month after the termination of tenancy alongwith interest @ 9% per annum till the delivery of possession of the suit property. Written statement was filed by the defendant-respondent. During the pendency of the suit, after filing of the written statement, the present application was filed wherein the following prayer was made :

“ It is, therefore, prayed that application of the applicant may kindly be accepted/allowed and the respondent may kindly be ejected/evicted from the shops fully described in the heading of the application and the applicant may kindly be put into vacant possession of the shop in question by passing necessary orders in this regard;

And

For directing the respondent to pay the rent from April 2021 to 31.12.2023 and also directing the respondent to pay the rent from March 2021 to 31.12.2023 alongwith future interest @ 12% per annum till its realization as the recovery of rent amount of Rs.4,71,744/- alongwith interest @ 9% per annum from January 2020 to March 2021 is pending before this Hon'ble Court;

And

Any other relief which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may kindly also be granted in favour of the applicant."

3. Reply was filed to the said application and the same was dismissed vide the impugned order dated 07.09.2024.

4. Learned counsel for the plaintiff-petitioner would contend that the defendant-respondent had admitted in his written statement that he had intentionally not paid the rent and that the period of rent agreement has also expired and hence the present application was filed for eviction of the defendant-respondent from the shop in question and for payment of rent. It is further the contention that as per the jamabandi, the defendant-respondent owns another shop in the same vicinity and is illegally occupying the shop of the plaintiff-petitioner.

5. Heard.

6. In the present case a perusal of the prayer made in the suit for possession as well as in the application under Section 151 CPC would reveal that the prayers are almost identical. What the plaintiff-petitioner is wanting infact is that the suit be decreed on an application under Section 151 CPC when the trial is yet to commence. It is trite that any interim relief which would amount to decreeing the suit cannot be granted. The Trial Court has also held the same. Hon'ble Supreme Court in case of **State of Uttar Pradesh vs. Ram Sukhi Devi [AIR 2005 SC 284]** has held as under :

“ 8. To say the least, approach of the learned Single Judge and the Division Bench is judicially unsustainable and indefensible. The final relief sought for in the writ petition has been granted as an interim measure. There was no reason indicated by learned Single Judge as to why the Government Order dated 26.10.1998 was to be ignored. Whether the writ petitioner was entitled to any relief in the writ petition has to be adjudicated at the time of final disposal of the writ petition. This Court has on numerous occasions observed that the final relief sought for should not be granted at an interim stage. The position is worsened if the interim direction has been passed with stipulation that the applicable Government Order has to be ignored. Time and again this Court has deprecated the practice of granting interim orders which practically give the principal relief sought in the petition for no better reason than that of a prima facie case has been made out, without being concerned about the balance of convenience, the public interest and a host of other considerations. [See Assistant Collector of Central Excise, West Bengal v. Dunlop India Ltd. (1985 (1) SCC 260 at p. 265), State of Rajasthan v. M/s Swaika Properties (1985(3) SCC 217 at p.224), State of U.P. and Ors. v. Visheshwar (1995

Supp (3) SCC 590), Bharatbhushan Sonaji Kshirsagar (Dr.) v. Abdul Khalik Mohd. Musa and Ors. (1995 Supp (2) SCC 593), Shiv Shankar and Ors. v. Board of Directors, U.P.S.R.T.C. and Anr. (1995 Supp (2) SCC 726) and Commissioner/Secretary to Govt. Health and Medical Education Department Civil Sectt., Jammu v. Dr. Ashok Kumar Kohli (1995 Supp (4) SCC 214).] No basis has been indicated as to why learned Single Judge thought the course as directed was necessary to be adopted. Even it was not indicated that a prima facie case was made out though as noted above that itself is not sufficient. We, therefore, set aside the order passed by learned Single Judge as affirmed by the Division Bench without expressing any opinion on the merits of the case we have interfered primarily on the ground that the final relief has been granted at an interim stage without justifiable reasons. Since the controversy lies within a very narrow compass, we request the High Court to dispose of the matter as early as practicable preferably within six months from the date of receipt of this judgment.”

7. The argument of learned counsel for the plaintiff-petitioner that because an admission has been made in the written statement and that the period of rent agreement has also expired would entitle the plaintiff-

petitioner to the grant of relief as prayed for in the application under Section 151 CPC, deserves to be rejected as the same would amount to decreeing the suit. The argument of learned counsel for the plaintiff-petitioner that the defendant-respondent owns another shop and hence the shop of the plaintiff-petitioner in possession of the defendant-respondent is illegal, also deserves to be rejected. At this stage, on an application under Section 151 CPC, the merits of the case cannot be gone into.

8. In view of the above, I do not find any merits in the present revision petition and the same is accordingly dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

23.10.2024
jk

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