

CR-263-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-263-2024 (O&M)
Reserved on : 18.01.2024
Pronounced on : 23.01.2024

HARI CHARAN DASSPetitioner

VERSUS

KANNU SAINI AND OTHERSRespondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. C.L. Sharma, Advocate for the petitioner.

ALKA SARIN, J.

1. The present petition has been filed under Article 227 of the Constitution of India challenging the order dated 10.11.2023 (Annexure P-3) whereby the stay application filed by the third party objector in the appeal against the order dated 18.08.2023 has been dismissed.

2. The brief facts relevant to the present case are that respondent No.1 filed an ejectment petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as 'the Punjab Rent Act'). Respondent No.1 being a co-owner filed the ejectment petition on the grounds of arrears of rent and *bonafide* personal necessity.

3. On notice, the title of respondent No.1 was challenged. It was further the stand taken by the tenant that the rent had been paid to one Hari Charan Dass son of Krishan Kumar who was also one of the co-sharer of the property. The Rent Controller vide order dated 09.05.2016 allowed the eviction petition. An appeal was preferred by the judgment debtor-respondent No.2 herein which was also dismissed vide order dated

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19.08.2019. Subsequently, respondent No.1-decree holder filed an execution petition. In the execution petition the judgment debtor suffered a statement that he had vacated the premises and he was no more in possession of the demised premises. Third party objections were also filed by the petitioner herein.

3. On the basis of the pleadings of the parties the following three issues were framed :

- (i) Whether the third party objector Hari Charan Dass is entitled to the possession of the demise premises, i.e. shop being co-owner along with decree holder ? OP-third party objector
- (ii) Whether the objections of the third party objector are not maintainable on the ground that he has no share in the demise property ? OP-DH
- (iii) Whether the decree holder is not entitled to recover arrears of rent on the ground that, in the execution petition, arrears of rent as assessed by the learned Rent Controller cannot be recovered without any specific order of recovery passed by the Civil Court ? OP-JD.

Before the Executing Court the learned counsel for the petitioner (third party objector) suffered a statement that they have received possession and the objections be dismissed as withdrawn. On the said basis the evidence of the petitioner was closed. The decree holder appeared and

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tendered in evidence his own affidavit and other documentary evidence. Vide order dated 18.08.2023 the Executing Court held that the third party objector i.e. the petitioner herein had failed to prove his case by leading cogent evidence and he had failed to do so despite availing opportunities for the same. He also did not come present to cross-examine the witness of the decree holder and further that the statement of the third party objector that the objections be dismissed as withdrawn clearly showed his intention not to contest the objections. Accordingly, the decree holder was held entitled to possession and warrants of possession were issued. Aggrieved by the said order, an appeal was preferred by the petitioner and his sisters (proforma respondent Nos.3, 4 and 5 herein). In that appeal an application for stay was filed. The said application for stay was dismissed vide impugned order dated 10.11.2023 by the First Appellant Court. Hence, the present revision petition.

4. Learned counsel for the petitioner has contended that the petitioner is the co-owner of the shop and the erstwhile tenant (respondent No.2 herein) had handed over possession to him and hence he was entitled to remain in possession of the shop. It is submitted that the tenant had given him the possession of the shop after the eviction order was passed.

5. I have heard the learned counsel for the petitioner.

6. The Rent Controller had disbelieved the tenant qua him having paid the rent to the petitioner. The tenant had preferred an appeal against the eviction order dated 09.05.2016 of the Rent Controller which appeal was dismissed vide order dated 19.08.2019 of the Appellate Authority. The

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petitioner chose not to become a party to the litigation during the pendency of the proceedings before the Authorities under the Rent Act. Subsequently, during the execution proceedings, the judgment debtor made a statement that he had handed over vacant possession. The present petitioner, who had filed third party objections, also made a statement that he had got possession of the property and therefore did not pursue the objections filed by him before the Executing Court. Neither did the petitioner (third party objector) lead any evidence nor did he come forward to cross-examine the witness of the decree holder-respondent No.1. There being nothing on the record to substantiate the pleas raised and argued, learned counsel for the petitioner has not been able convince this Court that he has any right, title or interest in the property. The attempt seems to be more to hijack the ejectment proceedings to try and legalize his possession on the property.

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

23.01.2024

Aman Jain

**(ALKA SARIN)
JUDGE**

*NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No*