

2024:PHHC:006708

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

129

CR-7590-2023 (O&M)

Date of Decision : 18.01.2024

RAJESH KUMAR BEDI

.... Petitioner

VERSUS

AMAN KASHYAP

.... Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ramesh Kumar Bamal, Advocate for the petitioner.

ALKA SARIN, J. (ORAL)

1. The present revision petition has been filed challenging the order dated 29.11.2023 whereby the Appellate Court has assessed the mesne profits at the rate of Rs.40,000/- per month for the first floor of the building from the date of the passing of the order by the Rent Controller and has further passed a conditional stay order subject to the petitioner depositing the entire arrears of rent (as assessed by the learned Rent Controller on 22.08.2022) and on payment of the amount of mense profits.

2. Learned counsel for the petitioner has contended that the relationship of landlord and tenant in the present case was denied and hence there was no question of assessment of provisional rent. It is further the argument of the learned counsel for the petitioner that initially the Rent Controller on 25.05.2022 had passed an order framing issues, thereafter provisional rent was assessed vide order dated 22.08.2022. Learned counsel would argue that the same amounted to review of the order dated 25.05.2022. It is further the contention of the learned counsel that the

eviction has been ordered on the ground of non-payment of the provisional rent as assessed. Learned counsel would further contend that the sale deed itself is a sham document on the basis of which the eviction petition has been filed.

3. Notice of motion.

4. Mr. Kunal Mulwani, Advocate and Mr. Daksh Uppal, Advocate appear and accept notice on behalf of the respondent. Mr. Chetan Mittal, Senior Advocate appearing on behalf of the respondent has contended that there is material concealment of facts by the petitioner in the present petition. Learned senior counsel has further contended that the eviction petition was filed by the respondent on 22.12.2021. The petitioner herein denied the relationship of landlord and tenant. However, the provisional rent was assessed by the Rent Controller on 22.08.2022. The said order dated 22.08.2022 was challenged by the petitioner herein before the learned Appellate Authority which appeal was dismissed vide order dated 21.09.2022. On 26.09.2022 an eviction order was passed by the Rent Controller as the provisional rent assessed was not paid and directed the tenant to hand over vacant possession within a period of 60 days. A revision petition was filed challenging the orders dated 22.08.2022 and 21.09.2022 being CR-1281-2023. In the said revision petition notice of motion was issued on 01.03.2023. Vide order dated 18.04.2023 the revision petition was dismissed by this Court on the ground of concealment of material facts as well as on merits. A review was preferred of the order dated 18.04.2023 which was also dismissed vide order dated 21.09.2023 on the grounds of delay as well as on merits. It is apt to note that on 23.11.2022 an application

for extension of time to vacate the premises was filed by the petitioner herein before the Rent Controller. Thereafter on 30.11.2022 execution petition was filed by the respondent-landlord. The application filed for extension of time was dismissed vide order dated 08.12.2022. On 15/21.12.2022 possession of the ground floor was delivered to the respondent-landlord with the help of the Bailiff. The petitioner herein preferred an appeal challenging the eviction order dated 26.09.2022. In the appeal an application was filed for assessing the mense profit and to pay the arrears of rent. On 29.11.2023 (impugned order) the Appellate Court stayed the dispossession of the petitioner subject to payment of Rs.40,000/- per month which was assessed as mesne profits and the petitioner herein was also directed to pay the entire arrears of rent. Learned senior counsel appearing on behalf of the respondent would contend that even in the present case the learned counsel for the petitioner has not argued as to how the rent as assessed as mesne profits is faulty. Rather, the petitioner has sought to reopen the assessment of rent which has attained finality vide orders dated 18.04.2023 and 21.09.2023.

5. Heard.

6. In the present case the petitioner herein had challenged the order of assessment of provisional rent right upto this Court and CR-1281-2023 was dismissed by this Court by a detailed order on 18.04.2023. The concluding portion of the order dated 18.04.2023 reads as under :

“5. Having heard arguments, I am of the view that revisionist-tenant, who is seeking an equitable relief before this Court must also at the same time conduct

equitably in order to seek discretionary indulgence of the Court. Having intentionally withheld material facts from the Court as well as concealment of filing of an application dated 23.11.2022 (Annexure R-2), which has been placed on record by respondent-landlord along with an application seeking summary dismissal of revision petition, I am of the view that revisionist does not deserve any indulgence by invoking extraordinary revisional jurisdiction of this Court. In fact, very pleading of the revisionist-tenant before learned Rent Controller vide aforesaid application (Annexure R-2), non-suits him to seek any relief from this Court, at this stage, given that said application was dismissed vide order dated 08.12.2022 (Annexure R-3) and he did not take any steps to seek any remedy against the said order. Both head note of the application as well as order passed on the same being relevant, are reproduced herein below:

Head note of application dated 23.11.2022 (Annexure R-2) filed before learned Executing Authority (Rent Controller) by revisionist-tenant

“Application under section 151 of the Code of Civil Procedure, 1908, with a prayer seeking extension of time to vacate the demised premises from 60 days as has been directed vide order/ judgment

dated 26.09.2022 to further, period of 90 days pertaining to the ground floor and first floor portion of house No.247, Sector 15-A, Chandigarh (except two bed rooms on the ground floor along with attached bathrooms, lobby and rear courtyard under the possession of the Revisionist/ respondent) as directed in the order/ judgment dated 26.09.2022, keeping in view the facts and circumstances mentioned above and in the interest of justice.”

Order dated 08.12.2022 (Annexure R-3) passed on aforesaid application

“Arguments heard on application for issuance of direction to Bailiff to take the possession of premises by breaking open the lock.

Vide separate order, application for issuance of direction to Bailiff to take the possession of premises by breaking open the lock stands dismissed at this stage.

Vide separate order of even date, application under Section 151 CPC with a prayer seeking extension of time to vacate the demised premises from 60 days as has been directed vide order/ judgment dated 26.09.2022 to further period of 90 days pertaining to the ground floor and first floor

portion of house No.247, Sector 15-A, Chandigarh (except two bed rooms on the ground floor along with attached bathrooms, lobby and rear courtyard under the possession of the Revisionist/ respondent) as directed in the order/ judgment dated 26.09.2022 stands dismissed being devoid of any merit.

Accordingly, warrants of possession in respect of the suit property fully detailed and described in judgment dated 26.09.2022 be issued for 03.01.2023.”

6. In view of the aforesaid, revision petition is dismissed both on merits as well as concealment of material facts”

7. Subsequently, a review was preferred being RA-CR-140-2023 which was also dismissed vide order dated 21.09.2023. Learned counsel for the petitioner has not shown to this Court any document that the said order has been challenged before the Hon’ble Supreme Court. The arguments raised by the learned counsel for the petitioner are all qua the assessment of provisional rent. Learned counsel for the petitioner in effect is wanting this Court to revisit the order dated 18.04.2023 which has already attained finality. This Court in the present case, where the only challenge is to the assessment of mesne profits, cannot possibly even venture to reopen the assessment of rent which has since attained finality. No argument has been

raised by the learned counsel for the petitioner as to how the rent assessed as mesne profits is incorrect.

8. 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.

18.01.2024
Aman Jain

(ALKA SARIN)
JUDGE

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