



CR-7193-2024

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

(131)

CR-7193-2024

Date of decision: - 10.12.2024

Sanjiv Karagwal and another

....Petitioners

Versus

Rita Kakar

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Ankur Lal, Advocate,
for the petitioners.

VIKAS BAHL, J. (ORAL)

1. Present civil revision petition has been filed under Article 226 & 227 of the Constitution of India read with Section 115 of CPC for setting aside the impugned order dated 14.11.2024 passed by the Civil Judge (Junior Division), Gurugram whereby in the Execution Petition No.192 of 2024, the Executing Court issued warrants of possession to take the possession of the property in dispute.

2. Learned counsel for the petitioners has submitted that against the judgment and decree dated 16.03.2024 (Annexure P-2), the petitioners have filed an appeal and the said appeal is pending and has prayed that till the pendency of the said appeal, the order passed by the Executing Court issuing warrants of possession for 09.01.2025 be stayed.

3. This Court has heard learned counsel for the petitioners and



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has perused the paper-book and is of the opinion that the present revision petition is meritless and deserves to be dismissed and the impugned order dated 14.11.2024 passed by the Civil Judge (Junior Division), Gurugram, is in accordance with law and deserves to be upheld, for the reasons which are detailed herein after.

4. It is not in dispute that the present petitioners had filed a suit for permanent injunction, in which, a counter claim for possession and recovery of Rs.1,80,000/- together with mesne profits was filed by the respondent. Vide judgment and decree dated 16.03.2024 (Annexure P-2), the said suit was decided and the counter claim was decreed in the following terms: -

Issue No.5 (Relief).

24. As a sequel of aforesaid discussion and finally arrived on above said issues No.1 & 2 the suit of plaintiffs succeeds and counter-claim of defendant/counter claimant also succeeds and suit as well as counter claim stand decreed with costs. Defendant is restrained from evicting the plaintiffs except in due process of law. Plaintiffs on the other hand, are directed to hand over the vacant possession of the suit property within two months from today to counter claimant. Plaintiff No.1 is further directed to make the payment of arrears of due rent of Rs.1,80,000/- for the month of June 2021 till October 2021 alongwith interest @ 18% per annum. Plaintiff is further directed to make the payment of mesne profits @Rs.1500/- per day w.e.f. 1.11.2021 till the date of realization within two months from today. Plaintiff is further directed to clear all dues of water and electricity bills till the time he hands over the vacant possession to the counter claimant. The security deposit be set off against the arrears. Decree-sheet be prepared accordingly. File be consigned to record-room after due compliance.



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***Pronounced in Curia.
Dated:-16.03.2024.***

***(Viren Kadyan)
Civil Judge (Junior Division),
Gurugram ”***

5. It is also not in dispute that the petitioners filed an appeal against the said judgment and decree and vide order dated 31.05.2024, the Additional District Judge, Gurugram was pleased to pass the following order: -

*“Present: Shri Dinesh Kaushik, Advocate for the appellant
Shri D.S. Yadav, Advocate for respondent.*

Memorandum of appearance has been filed on behalf of respondent. Respondent has appeared and adjournment sought for arguments. Heard. Allowed. Power of attorney be also filed on behalf of respondent on the date fixed.

At this stage, court fees paid by appellant is also produced. The counsel for respondent has highly objected to the same. Therefore, now to come up on 10.07.2024 for consideration whether the court fees is complete or not.

The counsel for the appellant has also requested that the other party has moved an application for eviction and his eviction may be stayed. This contention of learned counsel for appellant is highly objected by the respondent.

In the given circumstances, justice will be met, if the appellant pays the principal amount of Rs. 1,80,000/- alongwith mesne profit accrued upto 31.05.2024 within a month. If the compliance is made, then trial court will not press upon eviction.

***(Mona Singh)
ADJ, Gurugram
UID No. HR-0232***

Date of order:31.05.2024”

6. Thereafter, on 20.07.2024, the Additional District Judge, Gurugram had passed the following order: -

*Present : Sh. Dinesh Kaushik, Advocate for applicant/appellant
Sh. D.S. Yadav, Advocate for respondent.*



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The counsel for respondent has appeared in view of application, notice of which issued on 16.07.2024. He brought to the notice to the Court that the present court had issued direction to the appellant vod 31.05.2024 for paying principal amount of Rs. 1,80,000/- along with mesne profit but the counsel for the appllant has cleverly got issued notice after tendering the cheque of Rs. 1,80,000/- only. Heard.

The perusal of file indeed shows that the counsel for appellant has not complied with the direction issued on 31.05.2024. Therefore, the said cheque is also refused by the counsel for respondent. Now to come upon 03.12.2024, the date already fixed for arguments.

*(Mona Singh)
ADJ, Gurugram
UID No. HR-0232*

Date of order: 20.07.2024”

7. It is also not in dispute that the order dated 31.05.2024 has not been complied with, inasmuch as, the mesne profits which had accrued up to 31.05.2024 had not been deposited. The orders dated 31.05.2024 and 20.07.2024 passed by the 1st Appellate Court, as per the case of petitioners, have not been challenged. Once there is no stay operating against the judgment and decree dated 16.03.2024 in view of non-compliance of the interim order dated 31.05.2024, then in the said situation, it is incumbent upon the Executing Court to execute the judgment and decree dated 16.03.2024. Accordingly, the Executing Court vide the impugned order dated 14.11.2024 has rightly proceeded in the execution petition in order to put the counter claimant/decreed holder in possession of the suit property. There is no illegality in the impugned order dated 14.11.2024 passed by the Executing Court, who is duty bound

to execute the judgment and decree dated 16.03.2024.

8. Keeping in view the above-said facts and circumstances, this Court is of the view that the impugned order has been correctly passed and deserves to be upheld and the revision petition filed by the petitioners being meritless, deserves to be dismissed and is accordingly dismissed.

December 10, 2024
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes