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## **Dinesh Vs Harish And Others**

### **Miscellaneous Petition No.3280 Of 2020**

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**Court:** Madhya Pradesh High Court (Indore Bench)

**Date of Decision:** Dec. 10, 2020

**Acts Referred:**

Constitution Of India, 1950 " Article 227#Madhya Pradesh Accommodation Control Act, 1961  
" Section 12(1)(a)#Code Of Criminal Procedure, 1973 " Section 151

**Hon'ble Judges:** Rohit Arya, J

**Bench:** Single Bench

**Advocate:** Sunil Jain, Nipun Choudhary, Vinay Gandhi

**Final Decision:** Dismissed

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### **Judgement**

Rohit Arya, J

1. This instant miscellaneous petition under Article 227 of the Constitution by the judgment-debtor / petitioner is directed against the order dated

23/11/2020 passed in execution case No.34/2016/2019 allowing the application filed by the decree-holder for issuance of warrant of possession.

2. Facts relevant for disposal of this case are in narrow compass:

The plaintiffs / decree-holders had filed civil suit No.34A/2016 on 30/06/2016 for eviction against the petitioner / tenant on the grounds envisaged

under section 12(1)(a) 'arrears of rent' & (f) 'bona fide need' of the Madhya Pradesh Accommodation Control Act, 196 in respect of non-residential

property, viz., shop bearing No.32 admeasuring 170 sq.ft., Rajwada, Indore (hereinafter referred to as the 'suit property').

The trial Court decreed the suit on both the grounds vide judgment and decree dated 29/08/2019.

The petitioner / tenant was directed to handover the vacant possession of the suit property within two months, to pay the respondents a sum of

Rs.3,32,500/- towards arrears of rent and also pay rent at the rate of Rs.35,000/- per month from the date of filing of the suit till the time of handing

over vacant possession to the respondents / decree-holders and cost of the suit. It is appropriate to mention that no rent was paid from 30th June, 2016

to 29th August, 2019 by the petitioner.

Being aggrieved by the judgment and decree passed by the trial Court, the petitioner / tenant has preferred first appeal No.30-A/2019 and also an

application for stay under Order 41 rule 5 CPC before VIII Additional District Judge, Indore. The first appellate Court granted conditional stay against

dispossession inter alia directed the petitioner to deposit arrears of rent with the respondents alongwith security amount of Rs.50,000/- within fifteen

days from the date of the order dated 16.10.2019. The petitioner failed to comply with the order. Thereafter, the petitioner has filed an application

under section 151 CPC seeking extension of time to comply with the conditional stay order dated 16/10/2019. The said application was rejected by the

first appellate Court on 08/11/2019.

Another application filed for the same was purpose was also dismissed by the first appellate Court vide order dated 09/12/2019.

3. Against the aforesaid orders dated 08/11/2019 and 09/12/2019 passed by the first appellate Court, the petitioner filed M.P.No.6715/2019 before this

Court for setting aside the same and extension of time to deposit the decretal amount.

This Court on 08/01/2020 has passed the following order, relevant portion is quoted below:

“Upon hearing counsels for the parties looking to the substantial due amount of Rs.8,97,770/-, it shall be appropriate to extend period of four months

to deposit the entire arrears in equal installments payable on every 15th of the following month. Besides, petitioner shall pay monthly rent of

Rs.35,000/- per month on 5th of every following month. Failure of compliance of either of the two conditions or both conditions shall entitle the

respondents-plaintiffs to seek execution of the decree and obtain possession of the suit premises without further reference to the Court.”

“ ...

Accordingly, the instant misc.petition stands disposed of.”

Even this order has not been complied with.

4. The respondents / decree-holders have preferred an application before the executing Court for execution of the decree dated 29/08/2019 (supra).

5. The executing Court upon due consideration and verification of the fact of non-compliance of the order passed by this Court and the conditional

stay order passed by the first appellate Court referred above has ordered for issuance of warrant of possession.

6. The learned senior counsel though argued at length against the impugned order but does not dispute the fact of non-compliance of the order passed

by this Court in M.P.No.6715/2019 on 08/01/2020 (supra), particularly payment of due amount mentioned therein within the stipulated time. However,

he prays that some more time may be granted to the petitioner for compliance of the said order.

7. Learned counsel for the respondents / decree-holders has vehemently opposed the prayer inter alia contending that the petitioner has all along

evaded payment of rent and also the arrears of rent for all these years. Besides, the landlords / decree-holders have also established the bona fide

need. In fact, the executing Court had earlier issued warrant of possession on 11/11/2019. But, due to non-execution of the same, again ordered for

issuance of warrant of possession vide orders dated 10/10/2019 and 18/12/2019 with the police assistance.

It is alleged that the petitioner with his brothers not only abused officers of the Court but, also pelted stones and physically assaulted them. In that

context, FIR has been registered at crime No.105/2020 by the Police Station, Sarafa, Indore on 02/12/2020.

The conduct of the petitioner under the circumstances does not warrant further indulgence by this Court. Accordingly, prayed for dismissal of the

miscellaneous petition.

8. Heard.

9. It is well settled that the jurisdiction of this Court under Article 227 of the Constitution of India is to ensure that the subordinate Courts do not

transgress the jurisdiction conferred upon them by a statute rendering the order vulnerable for either want of jurisdiction or in excess of jurisdiction.

Besides, the orders passed by the subordinate Courts are not polluted with illegality due to ignorance or in violation of substantive laws, amongst other

grounds.

10. In the instant case, the first appellate Court had granted the conditional stay order on 16/10/2019 but, the petitioner remained indifferent and

defaulted in compliance thereof; despite the prayer for extension of time was refused vide orders dated 08/11/2019 and 09/12/2019.

This Court vide order dated 08/01/2020 in Mis. Petition No.6715/2020 (supra) had acceded to the prayer of the petitioner and directed for compliance

of the conditional stay order passed by the first appellate Court within stipulated period quoted above against dispossession. Now at a distance of

about one year, either of the orders, viz., (i) this Court dated 08/01/2020 and (ii) first appellate Court dated 16/10/2019 (supra) remained not complied

with by the petitioner without any plausible reason. Besides, the conduct of the petitioner, prima-facie, involved in criminal activity is vulnerable.

However, this Court refrains from commenting upon merits thereof.

In the obtaining facts and circumstances, no further indulgence is warranted by this Court.

11. The upshot of the aforesaid discussion results in dismissal of this miscellaneous petition. The executing Court has not committed any illegality or

jurisdictional error and has applied correct principle of law while ordering for issuance of warrant of possession.

12. Miscellaneous petition sans merit and is hereby dismissed.