

(1993) 104 PLR 477

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 3472 of 1992

Global Plastics and
Chemicals (India) Pvt.
Ltd.

APPELLANT

Vs

Mrs. Gian Kaur and
Another

RESPONDENT

Date of Decision: June 3, 1993

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 40 Rule 1, 115

Citation: (1993) 104 PLR 477

Hon'ble Judges: G.C. Garg, J

Bench: Single Bench

Advocate: M.L. Sarin and Alka Sarin, for the Appellant; M.S. Jain Harsh Aggarwal and Adarsh Jain, for the Respondent

Judgement

G.C. Garg, J.

This revision petition has a chequered history. Parties have already been upto the Supreme Court at least on two earlier occasions This is the third round only against the interlocutory order passed in the suit, It is, however, not considered necessary to state facts in detail Suffice it to say that plaintiffs filed a suit for injunction in the year 1988 alleging 1 tenancy under the defendant at Rs. 5000/- per month with effect from July 30, 1988 and thereby praying that the defendant be restrained from dispossessing the plaintiffs forcibly. It was also pleaded that Rs. 70,000/- was paid as advance rent. The defendant, however, by way of counter claim pleaded oral agreement to sell and that Rs. 70,000/- were paid as advance under the agreement which amount stood forfeited. The allegation of tenancy and the payment of advance rent by the plaintiffs to the defendant was denied.

2. Sh. R. S. Raghav, Advocate was appointed as a receiver. Receiver finally got possession of the property in the middle of May, 1991 in view of the directions issued by this Court while deciding civil revision No. 3401 of 1990 on May 7, 1991. A couple of days later, petitioner filed a review application in the civil revision, agreeing therein to become a lessee at Rs. 15,000/- per month but the same was dismissed. In SLP taken against the orders dismissing the revision petition and the review application, the Apex Court passed the following order :-

"Heard counsel on both sides. The special leave petitions are dismissed However, the dismissal of these special leave petitions shall not come in the way of the petitioners moving the trial Court for appropriate directions to the receiver as to the management of the property to the best advantage of all the parties. If any proposal is submitted by the petitioners, the same will be considered by the trial Court. We may point out that as long as the Receiver is functionary, the power of the Court to issue directions from time to time for an efficient and productive management of the property to best advantage of the parties is not exhausted."

3. Plaintiffs thereafter, in view of the order of the Supreme Court, moved an application dated August 5, 1991 praying that the Court may fix a reasonable amount by way of lease money/licence fee and direct the receiver to hand over the possession of the suit property to the plaintiffs till the disposal of the suit. The application was opposed The trial Court accepted this application and ordered the leasing out of the plot in dispute to the plaintiffs at Rs. 15,500/- per month till the decision of the above suit. It is this order of the trial Court which is now under challenge.

4. Mr. M. S. Jain, Sr. Advocate, learned counsel for the plaintiff-respondents has raised a preliminary objection about the maintainability of the revision petition. According to the learned counsel impugned order being an order under Rule 1 of Order XL of the C P.C. is appealable under clause "s" of Rule 1 of Order XLII1 and, therefore, revision petition is not maintainable against such an order. It is also contended that the respondents have already taken possession of the property on November 17, 1992 in pursuance of the order under revision before the grant of stay and, therefore, the revision has become infructuous

5. There is no merit in either of the contentions of Mr. Jain. Suffice it is to say that by the impugned order only application of the plaintiffs for leasing out of the plot to them has been decided. It is not an order under any of the clauses of Rule 1 of Older XL. Clause "a" of Rule 1 of Order XL deals with the appointment of a receiver, clause b" deals with the removal of a person, from possession or custody of the property, clause "c" relates to the committing of properly to the management of the receiver and clause "d" authorises the Court to confer such power on the receiver which may be necessary for the management of the property and which the Court thinks fit. The impugned order thus can not be an order passed in exercise of the power under Rule 1 of Order XL Once that is so it is not appealable under clause "s" of Rule 1 of Order XLIII and is only revisable.

6. The mere fact that the plaintiffs got into possession of the property before the order of stay was passed by this Court would not render the revision infructuous. No rule or law has been brought to my notice in support of the contention, the same is thus rejected.

7. On merits, Mr. Jain contended that the trial Court passed the impugned order in the spirit of the Supreme Court's order dated July 22, 1991. The order is thus within jurisdiction and there is no illegality. Mr. Jain went on to contend that even if the trial Court acted illegally, no interference was called for the exercise of the revisional jurisdiction in view of the law laid down in *M/s D.L.F. Housing and Construction Company (P) Ltd. v. Sarup Singh* (1971) 73 P. L. R. 92 [Shri M.L. Sethi Vs. Shri R.P. Kapur](#), and [The Managing Director \(MIG\) Hindustan Aeronautics Ltd. and Another, Balanagar Vs. Ajit Prasad Tarway](#). These judgments are not applicable to the facts of the present case. The present is not a case where the trial Court refused to exercise jurisdiction vested in it or exercised jurisdiction not vested if it is in my view a case where the Court acted with material irregularity and illegality in the exercise of its jurisdiction. The trial Court was not right in precluding from consideration the claim of the defendant and third parties for giving the property on lease or license during the trial of the suit and only restricting the choice on the plaintiffs alone. There was no justification in observing :--

"Of course, the defendants can not be precluded from making consideration of their request but no act as would cause sheer disadvantage to the other side should be accomplished. The possession should also not be given to any third party as that might give rise to new controversies and new legal complications. As such, the choice that falls in the best interest of the parties is on the plaintiffs who, too, might be having a lurking fear and well founded also that if the possession is restored either to the defendants or to someone else, they may have to wash their hands off for all times to come. Therefore, I accept the application of the plaintiffs and order the leasing out of the plot in dispute to them."

8. Again the plaintiffs themselves offered Rs. 15,000/- per month on May 19, 1991 in retaining the possession of the property during the pendency of the suit. It is not indicated at all as to how the trial Court arrived at the figure of Rs. 15, 500/- per month in November, 1992. There was nothing before the Court to fix this rate. Even an offer had not been obtained from the parties to the suit or third parties about the actual amount the property could fetch in open market. The opinion of the receiver had also not been obtained. During the course of arguments it has been brought to my notice that the Haryana State Industrial Development Corporation vide its letter dated March 16, 1993, which had allotted the plot to the defendant- petitioner is itself asking extension fee in the sum of Rs. 3,75,000/- for the period from April 1, 1990 to June 30, 1993 at the rate of Rs. 125/- per square metre for not setting up the unit on the plot. So long as the litigation is going on, the petitioner will not be able to set up the plant and will have to pay the extension fee of about Rs. 1,20,000/- per annum. This aspect has neither been considered nor taken care of which in my view is most relevant. Again having regard to the previous conduct of the plaintiffs the approach of the trial Court in making provision

for default in the payment of lease money and delivery of possession is casual.

9. It may also be noticed that the plaintiffs admittedly remained in possession of the property from July 20, 1988 till middle of May, 1991 and did not pay any rent or license fee during all this period though even according to them they were liable to pay at the rate of Rs. 5000/- per month

10. There is, however, another aspect of the matter Will the setting aside of the order at this stage and directing the plaintiffs of deliver back the possession will help any of the parties; the answer has obviously to be in the negative. The suit as noticed above was filed in the year 1988 and the plaintiffs have already concluded their evidence. The case is now fixed for evidence of the defendant on August 19, 1993. The learned counsel appearing on behalf of the petitioner stated at the bar that the defendant will complete its evidence on the date already fixed and in any case would positively complete its evidence on the date fixed thereafter. In the circumstances, this revision can be disposed of with the following modifications and directions to the trial Court : --

(i) The plaintiffs shall deposit a sum at the rate of Rs. 5000/- per month for the period July 20, 1988 to May 15, 1991 on or before July 20, 1993 alongwith interest @ 12% per annum

(ii) The lease money or the license fee of Rs. 15,500/- per month as fixed by the trial Court shall be paid on or before the 25th of the preceding month and in case of default in either depositing the amount as noticed in clause "a" or not depositing the monthly lease money/license fee by the date aforesaid the plaintiffs would surrender the possession to the receiver and the trial Court will pass an appropriate order without loss of time.

(iii) In case the defendant is unable to complete its evidence on the date already fixed, it will be afforded another opportunity to complete the evidence and the date so fixed would be at an interval of one month thereafter on which date the defendant would positively complete its evidence as undertaken by the learned counsel for the defendant.

(iv) The plaintiffs would thereafter be afforded two opportunities to lead their evidence in rebuttal if need be The dates so fixed for rebuttal evidence again will be fixed in such a way that the entire rebuttal is concluded within period of two months of the conclusion of the evidence of the defendant.

11. The parties shall, however, be entitled to have the assistance of the Court for service of their witnesses, if request is so made, as contemplated by Order 16, Rule 7-A of the Code of Civil Procedure, but non service of the witnesses will be no ground to afford another opportunity to them to produce their evidence.

12. After the conclusion of the evidence as noticed above the Court will dispose of the main suit as expeditiously as possible, including any application made, but not later than two months of the conclusion of the evidence. In the event of the suit being dismissed,

the trial Court will issue a direction to the plaintiffs to deliver the possession of the property within one month of the order of the trial Court unless otherwise directed by the appellate Court.

13. In the event of the suit being decreed, a sum of Rs. 70,000/- if found to have been paid the defendant, will be adjusted in the future rent to be paid by the plaintiffs to the defendant unless otherwise directed by the trial Court or the Appellate Court as the case may be.

14. In view of the above discussion the impugned order stands modified to the extent indicated above and the revision petition is disposed of with a direct on to the trial Court to finally decide the suit after adhering to the observations made in this order. No costs.