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

CR-407-2025 (O&M)
Date of decision : 23.01.2025

Avtar Singh

... Petitioner

Versus

Rajinder Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Sushil K. Verma, Advocate and
Mr.Munish Raj Chaudhary, Advocate
for the petitioner.

VIKAS BAHL, J.(ORAL)

1. This is a Civil Revision Petition filed under Article 227 of the Constitution of India praying for setting aside the impugned order dated 03.10.2024 (Annexure P-8) passed by the Civil Judge (Sr.Div.), Barnala, vide which the application filed by the petitioner for recalling of warrant of possession has been dismissed.

2. Learned counsel for the petitioner has submitted that in the present case, respondent no.1-Rajinder Singh had filed a suit for possession of the shop in question and the present petitioner was impleaded as defendant no.1 and the original owner was impleaded as defendant no.2. It is submitted that the said suit was decreed vide judgment and decree dated 01.08.2018 and thereafter the owner i.e., respondent no.2 had filed an eviction petition against the present petitioner on the ground of non-

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payment of rent and in the said proceedings, the petitioner had paid an amount of Rs.2 lacs to respondent no.2 with respect to the arrears of rent on 11.02.2023 and accordingly, the said eviction petition was withdrawn. It is further submitted that since respondent no.2 was treating the petitioner to be a tenant, thus, the petitioner had withdrawn the appeal filed against the judgment and decree dated 01.08.2018. It is submitted that since as per the respondent no.2, the petitioner is presently the tenant, thus, the execution petition deserves to be rejected, however, the Executing Court vide order dated 03.10.2024 had dismissed the objections filed by the petitioner and had further issued warrants of possession.

3. This Court has heard the learned counsel for the petitioner and has perused the paper book and finds that the impugned order has been rightly passed and the same deserves to be upheld and the present petition is meritless and deserves to be dismissed for the reasons recorded hereinafter.

4. At the outset it would be relevant to mention that vide order dated 10.01.2025 fresh warrants of possession had been issued through police help returnable for 27.01.2025. It has further been stated in the said order that the Ahlmad is directed to mention on the warrants of possession with red ink about the police help and necessary intimation has to be sent to the concerned Police Station. The said order dated 10.01.2025 has not been challenged in the present petition and thus, on the said short ground alone, the present petition deserves to be dismissed. However, in addition to the above said fact, this Court has considered the facts of the case in detail.

5. It is not in dispute that respondent no.1-Rajinder Singh had

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filed a suit for possession of the shop in question on the basis of tenancy rights and previous possession and the said suit was suit no.429 dated 03.09.2012 and the present petitioner was defendant no.1 in the said suit whereas respondent no.2, who is stated to be the owner of the property as per the case of the present petitioner, was defendant no.2 in the said suit. The said suit was filed by respondent no.1 on the plea that respondent no.1 had taken the shop in dispute on rent on 01.09.2001 at the rate of Rs.1000/- per month and had been handed over the possession and a rent note had also been executed on 06.09.2001 and that the present petitioner had filed a false suit against respondent no.1 for permanent injunction restraining the respondent no.1 from taking forcible possession of the said shop, which was dismissed by the trial Court holding that the respondent no.1-plaintiff was the principal tenant and the present petitioner was a licensee and a licensee had no right to remain in possession once the license was revoked. It was further averred by the respondent no.1 that the present petitioner had filed an appeal against the said judgment and decree which was dismissed and it was held that present petitioner was in unauthorised possession over the shop in dispute. Accordingly, vacant possession was sought. In the said suit, following issues were framed:-

> "6. From the pleadings of the parties following issues were framed:
>
> *(1) Whether the plaintiff is entitled for possession of the tenancy rights of the suit property?OPP*
>
> *(2) Whether the plaintiff has no locus standi to file the present suit?OPD*
>
> *(3) Whether the present suit has been filed in collusion with*

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the defendant no.2?OPD

(4) Whether the suit of the plaintiff is within limitation?OPP

(5) Whether the present suit deserved to be dismissed as per Section 10 of the CPC? OPD

(6) Whether the plaintiff is estopped by his act and conduct from filing the present suit?OPD

(7) Relief."

6. After due contest, issue no.1 was decided in favour of the respondent no.1-plaintiff and against the present petitioner and even issue no.2 was decided against the present petitioner. Issues no.3, 4, 5 and 6 were also decided against the present petitioner and in favour of the plaintiff and accordingly, following relief was granted:-

"Relief

21. In view of my findings on the issues discussed above, the suit of the plaintiff succeeds and the same is hereby decreed with costs. ***Plaintiff is held entitled to the possession of the shop in question fully detailed in the head note of the plaint from the defendant no.1 on the basis of tenancy rights and previous possession. Defendant no.1 is directed to vacate the shop in question within 3 months from the passing of this judgment.*** *Decree sheet be prepared and the file be consigned to Record Room.*

Pronounced in open Court. *(Jarnail Singh)*
August 01, 2018. *Civil Judge (Sr.Divn.),*
Barnala.

7. The petitioner had filed an appeal against the said judgment and decree dated 01.08.2018 and vide order dated 05.02.2024, the same was withdrawn. Thus, the judgment and decree dated 01.08.2018 attained finality and it was incumbent upon the Executing Court to have executed

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the said judgment and decree and to grant possession to respondent no.1, who was the decree holder.

8. In the execution proceedings, objections were filed by the present petitioner in consonance with the arguments raised before this Court and the said objections were dismissed vide order dated 03.10.2024. In the impugned order, it was noticed that the judgment and decree dated 01.08.2018 was passed against the present petitioner for possession and against the said judgment and decree, an appeal was filed by the petitioner, which was dismissed as withdrawn and thus, the same had attained finality. It was further observed by the Executing Court that the said judgment and decree dated 01.08.2018, to which the present petitioner was a party, was passed in favour of respondent no.1 after a specific finding had been given that the respondent no.1-decree holder was a tenant in the shop in dispute and the present petitioner was required to hand over the possession of the shop in question to the decree holder / respondent no.1- Rajinder Singh. It was also observed by the Executing Court that even in case in the subsequent rent petition filed by the owner / landlord, some rent had been accepted from the present petitioner, even then, the same would not have an effect of setting aside the judgment and decree dated 01.08.2018, which was passed in favour of the decree holder and that the Executing Court could not go beyond the decree and was required to enforce the judgment and decree dated 01.08.2018 in its true spirit and accordingly, warrants of possession were issued. As has been stated hereinabove, vide subsequent order dated 10.01.2025, fresh warrants of possession have been issued with police help

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and the said subsequent order dated 10.01.2025 has not been challenged before this Court.

9. Before this Court, it could not be disputed that the judgment and decree dated 01.08.2018 vide which the suit of the respondent no.1-plaintiff had been decreed against the present petitioner for possession had attained finality and thus, it was the duty of the Executing Court to have executed the said decree and since there is no stay operating on the said judgment dated 01.08.2018, thus, the objections raised by the judgment debtor-petitioner were frivolous and have been rightly rejected. Accordingly, the impugned order dated 03.10.2024 and even the subsequent order dated 10.01.2025 (which has not been challenged) are upheld and the present petition being meritless, deserves to be dismissed and is accordingly dismissed.

(VIKAS BAHL)
JUDGE

January 23, 2025.
Davinder Kumar

Whether speaking / reasoned Yes/No
Whether reportable Yes/No

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