

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

COCP No.2352 of 2012
Date of Decision: 17.09.2013

Devinder Singh

... Petitioner

Versus

Sukhdev Thapar and another

... Respondents

CORAM: HON'BLE MR. JUSTICE MAHESH GROVER

Present: Mr. B.R. Mahajan, Advocate
for the petitioner.

Ms. Kiran Bala Jain, Advocate,
for respondent No.1.

Ms. Prabha Sharma, Advocate,
for respondent No.2.

MAHESH GROVER, J. (Oral)

The petitioner has invoked the jurisdiction of this Court with a prayer that proceedings under the Contempt of Courts Act be initiated against the respondents. The facts would be necessary to be noticed. In the year 1991, the shop in question was rented out to respondent No.1 along with machinery by the predecessors-in-interest of the petitioner, namely, Bachan Singh @ Gurbachan Singh.

The petitioner was desirous of getting the shop in order to set up their own business and thus rent petition was filed in the year 2001 seeking eviction of respondent No.1 from the shop in question on the ground of personal necessity and use and occupation of the petitioner. The petition was allowed

by the Rent Controller, Yamuna Nagar vide his judgment dated 23rd July, 2008 and respondent No.1 was directed to hand over the possession of the shop within two months from the date of passing of the order by the Rent Controller.

An appeal was preferred by respondent No.1 and the Appellate authority also dismissed the same on 15.02.2011 leading to the filing of the revision petition before this Court bearing Civil Revision No.2268 of 2011.

In these proceedings, respondent No.1 agreed to hand over the vacant possession of the shop in question to the petitioner and made a statement to this effect. Annexure P-1 is the order passed in the Civil Revision. The relevant part of the order of this Court is extracted hereunder:

“After arguing, when this Court was not agreeing with the contentions raised by learned counsel for the petitioner, Ms.Kiran Bala Jain, learned counsel appearing on behalf of the petitioner on instructions from his client Mr.Sukhdev Thapar, who is present in the Court submitted that let the petitioner be granted reasonable time to vacate the premises.

Mr. B.R.Mahajan, advocate, appearing on behalf of respondent Nos.2 to 9 on instructions from respondent No.5 Devinder Singh, who is present in the Court, have consented that in case this petition is dismissed with the observations that the petitioner shall hand over the possession of the vacant premises within one year from today i.e.on or before 31.07.2012, subject to payment of arrears of rent and further payment of rent in the advance by 10th of

every month and subject to filing of the undertaking as aforesaid before the Rent Controller within three weeks from today, then they have no objection in granting the time.

The submission of Mr.Mahajan, has been accepted by the learned counsel for the petitioner.

In view of the aforesaid stand taken by the parties, this petition is disposed of with the observations that the petitioner is granted one year's time to hand over the possession of vacant premises to respondent No.5 i.e.on or before 31.07.2012 subject to payment of arrears of rent as well as payment of advance rent by 10th of every month and also subject to filing of the undertaking before the Rent Controller as aforesaid within three weeks from today.

The petition stands disposed of.”

Pursuant to the above, respondent No.1 gave an undertaking before the Rent Controller to vacate the shop in question within the time stipulated.

Despite the undertaking, respondent No.1 did not vacate the premises and instead resorted to a devious plan to frustrate the orders of this Court and to over-reach it. He got a civil suit filed from his brother-in-law, namely, Sunil Kumar son of late Murari Lal praying for permanent injunction restraining the defendant (petitioner herein) from interfering in the actual physical and peaceful possession of the shop in question, which incidentally is the same property owned by the petitioner and which was subject matter of the rent proceedings

inter se between the petitioner and respondent No.1. In this suit, Sunil Kumar the plaintiff pleaded that the shop has been let out to him on rent w.e.f. 01.06.2012 at a monthly rent of ₹3,600/- inclusive of house tax.

Respondent No.1 also filed another suit praying for restoration of the possession on the ground that since the petitioner had got the premises vacated on the ground of personal necessity, he had instead of occupying the premises and using it for his own use, rented out it to Sunil Kumar son of late Murari Lal (brother-in-law of the petitioner and plaintiff in the civil suit for permanent injunction referred to above). Evidently, the facts reveal that respondent No.1 in collusion with his own brother-in-law, namely, Sunil Kumar have indulged in clever machinations to hoodwink the law and frustrate the claims of the petitioner and obstruct the course of justice.

It is necessary to note here that when the respondent Sukhdev Thapar contested the proceedings, there was no mention of Sunil Kumar being a tenant and the rent arrangement in his favour is said to have come about in June, 2012 as per the showing of Sunil Kumar in his suit for permanent injunction. The petitioner denies such an arrangement and pleads a complete fraud having been played with by the respondents in order to deprive him of the possession.

Evidently, respondent No.1 gave the possession of the premises to respondent No.2 and in this way absolved himself of the undertaking but at the same time managed to defeat the process of law altogether.

The conduct of respondent No.1 is, therefore, clearly contemptuous and he deserves to be proceeded against under the provisions of the Contempt of Courts Act and dealt with appropriately.

Before passing an order in this regard, respondent No.1 was directed to remain present in the Court. He is present today and when confronted with the material on record and the facts noticed above, he agreed to hand over the vacant possession of the shop in question to the petitioner before 4:00 pm today itself.

The Court has been apprised that the process of handing over the vacant possession of shop in question is in progress and is likely to be concluded in a few hours.

The counsel for respondent No.1 has pleaded regrets on behalf of respondent No.1 and has prayed that since the possession of the shop has been handed over, respondent No.1 be exonerated of all his liability and he be dealt with leniently.

On a consideration of the pleas raised before this Court, I am of the opinion that respondent No.1 does not deserve any leniency. He has consciously tried to subvert the process of law and he has defied his own undertaking and the

orders of this Court. Even though, he has handed over the possession of the premises but that is evidently on account of the consequences of the present petition staring him in the face.

The Court cannot be a silent spectator to the conscious subversion and abuse of the process of law. The respondent No.1, ordinarily, should have been sentenced to imprisonment for the following reasons:

i) that he has consciously subverted the process of law and defied the orders of this Court;

ii) he has resorted to manipulative tactics to deprive the petitioner of his legitimate claim;

iii) he has forced the petitioner to unwanted litigation i.e. two civil suits in the Courts at Jagadhri and a contempt petition here in this Court. This would have resulted in undue financial constraint on the petitioner and also forcing him into a completely avoidable litigation; and

iv) wastage of times of the Courts.

However, since the petitioner has now been given the possession and both the respondents have undertaken to withdraw the civil suits filed by them, I deem it appropriate to impose exemplary costs on the respondents instead of sentencing them.

The Court thus determines costs for the aforesaid

reasons as ₹1,00,000/-, which respondents No.1 and 2 shall pay to the petitioner. Respondent No.1 also undertakes to withdraw the civil suit filed by him in the Court at Jagadhari.

Respondent No.2 - Sunil Kumar son of late Murari Lal is also present in the Court. He has also furnished an undertaking in this Court that he will withdraw the civil suit filed by him against the petitioner. Separate undertakings to this effect have been recorded and shall form a part of the records of the proceedings.

Out of the costs of ₹1,00,000/- determined, ₹50,000/- shall be paid by respondent No.1 and ₹50,000/- by Sunil Kumar for filing a false, frivolous petition and a false affidavit before the trial Court in support of the civil suit.

The Chief Judicial Magistrate, Yamuna Nagar shall ensure that the costs are recovered from the aforesaid persons.

Copy of the order be sent to the Court of Chief Judicial Magistrate, Yamuna Nagar for compliance, and also to the Court where the civil suits have been filed and are pending, for intimation.

Disposed of.

**(MAHESH GROVER)
JUDGE**

17th September, 2013
Rajan