

5.3.2014 Present: Mr. Rajesh Kumar, Advocate vice counsel for the appellant.
Mr. Bimal Gupta, Advocate for the respondents.

CMP No. 306 of 2013.

Despite opportunities granted, rejoinder has not been filed. Learned counsel though prays for one more opportunity for the purpose, however, declined.

2. The applicant-appellant suffers decree and thereby has to hand over the vacant possession of land comprised in Khasra No. 10/1, measuring 0-7-4 bighas, situated in Mauza Ghor-Dhar, Tehsil Sadar, District Mandi by removing the structure he raised thereon. The appeal he preferred also stands dismissed by learned lower appellate Court vide judgment and decree under challenge in the main appeal. The appeal stands admitted for final hearing. In reply the application has been opposed on the ground that in the event of the operation, implementation and execution of impugned judgment is ordered to be stayed, the non-applicants/plaintiffs will suffer irreparable loss and injury. Learned counsel submits that despite the suit filed by the non-applicants/plaintiffs having been decreed by the trial Court and the decree so passed even affirmed by the lower appellate Court, the suit land is still in the use and occupation of the applicant-appellant. The land in question is valuable one and as the applicant has constructed a house thereon hence enjoying the usufruct thereof. It is further submitted that in the event of the interim order is passed in this application, it may be passed subject to payment of mesne profits to the tune of ₹10,000/- per month to the non-applicants/plaintiffs.

3. Having gone through the record and keeping in view that the land encroached upon by the applicant-appellant is situated in rural area and it is only the residential house constructed by the applicant-appellant thereon, a sum of ₹10,000/- claim by way of mesne profits is on higher side. However, in the given facts and circumstances, in my opinion, payment of ₹2,000/- by way of mesne profits by the applicant/appellant to the non-applicants/ plaintiffs from the date of impugned judgment and decree would serve the ends of justice. Therefore, subject to deposit of the arrears towards mesne profit so assessed in this order from the date of judgment and decree passed by learned lower appellate Court till 31st March, 2014, within six weeks from today and thereafter on or before 31st day of March during each calendar year till the appeal is finally disposed of, the execution of the impugned judgment and decree shall remain stayed. It is made clear that the failure on the part of the applicant to deposit the amount in question as directed; this order shall stand vacated automatically. The application stands accordingly disposed of.

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March 5, 2014
(ps)

(Dharam Chand Chaudhary), J.