

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

CR No.1818 of 2015 (O&M)

Date of Decision : 20.3.2015

M/s Purple Health Care Private Ltd.

.....Petitioner

Versus

Hari Parsad Singla

.....Respondent

CORAM:- HON'BLE MR. JUSTICE GURMIT RAM

Present: Mr. Amit Jain, Advocate for the petitioner.

GURMIT RAM, J.

This revision petition is filed by the petitioner-tenant against the order dated 21.2.2015 passed by the learned Rent Controller, Gurgaon vide which the application under Order 7 Rule 11 read with Section 151 CPC filed by the petitioner – tenant has been dismissed.

2. The brief facts as mentioned in this revision petition are that the respondent - landlord has filed an ejectment petition under Section 13 of The Haryana Urban (Control of Rent and Eviction) Act, 1973 (in short – 'the Act') seeking ejectment of the petitioner – tenant from the demised premises on the ground of non-payment of rent w.e.f. 1.10.2014 till 31.1.2015 @ Rs.2,87,500/- per month and service tax @ 12.36% on the amount of arrears of rent due w.e.f. 1.10.2012 to 31.3.2013. It is also mentioned in this revision that earlier ejectment petition filed by the respondent – landlord is also pending before the Court of learned Rent Controller, Gurgaon.

3. In the above-said former ejectment petition, the present petitioner – tenant filed an application under Order 7 Rule 11 read with Section 151 CPC for the rejection of this ejectment petition which was dismissed by the Court of learned Rent Controller vide the impugned order dated 21.2.2015.

4. Feeling aggrieved against this order, the petitioner – tenant has come up in the instant revision petition.

5. In the application under Order 7 Rule 11 read with Section 151 CPC, it was the case of the present petitioner – tenant that the demised premises is a non-residential building, which is governed by the provisions of Section 13 (3-A) of the Act for eviction purpose but the instant ejectment petition has been filed under Section 13 of the Act. Further this petition has not been presented in the prescribed format and it is also not maintainable for the reason that earlier petition on the same ground is already pending.

6. The impugned order is stated to be wrong, illegal and suffering from various material illegalities and hence not tenable in the eyes of law. It is also contended by the learned counsel for the petitioner – tenant that since the earlier ejectment petition filed by the present respondent – landlord is already pending, so the instant ejectment petition on the same ground is not tenable as it is hit by the principle of *res judicata*. In this regard learned counsel has relied upon the case law titled **Mehtab Singh Versus Shri Tilak Raj Arora and anr., 1988(1) R.C.R.(Rent) 159.**

7. But this Court is of the opinion that this case law is

not applicable to the case in hand for the reason that in that case the earlier ejectment petition was dismissed as withdrawn without liberty to file the second petition and it was held that fresh petition filed by the landlord is barred under the principles of *res judicata*. So far the case in hand is concerned, since both the above-said ejectment petitions filed by the respondent-landlord are pending before the learned Rent Controller, Gurgaon, hence the case law cited supra has no applicability to the present case.

8. Copies of both the ejectment petitions referred to in the instant application under Order 7 Rule 11 CPC are available on the record. From their perusal, it is found that in the earlier ejectment petition Annexure P-5 dated 30.9.2014, it is the case of the respondent-landlord that petitioner – tenant violated the terms of lease deed and as such he is liable to pay all the dues along with interest as per clause 2.2 of the lease deed. Further ejectment is also sought that the petitioner-landlord requires the demised premises for his own use and occupation.

In the second ejectment petition Annexure P-1 dated 20.1.2015, the petitioner has sought the ejectment of tenant on the ground of non-payment of rent for the period from 1.1.2012 to 31.3.2013 and 1.10.2014 to 31.1.2015 as also service tax w.e.f. 1.1.2012 to 31.3.2013 and 1.10.2014 to 31.1.2015.

9. In view of the above discussion, there is nothing wrong in the impugned order and no ground of any kind is made out to cause any interference in it. So the present petition stands dismissed and disposed of accordingly.

However, the petitioner-tenant is at liberty to take all the objections legal as well as factual which are available to him under the law, while filing the written statement in the above mentioned ejectment petitions.

Nothing observed hereinabove will have any effect on the merits of ejectment petitions which are stated to be pending before the learned Rent Controller, Gurgaon.

20.3.2015
Brij

(GURMIT RAM)
JUDGE

1. To be referred to the Reporters or not? No/Yes
2. Whether the judgment should be reported in the Digest? No/Yes