

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.5717 of 2014

Date of Decision.17.07.2015

On-Dot Couriers and Cargo Ltd.

.....Petitioner

Versus

M/s Gee Kay Foundation and others

.....Respondents

2. COCP No.69 of 2015

M/s Gee Kay Foundation and another

.....Petitioners

Versus

Mr. Amit Madan

.....Respondent

Present: Mr. Anish Gautam, Advocate
for the petitioner in C.R. No.5717 of 2014 and
for the respondent in COCP No.69 of 2015.

Mr. Gurmohan Singh Bedi, Advocate
for the petitioner in COCP No.69 of 2015 and
for the respondent in C.R. No.5717 of 2014.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest? Yes

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K. KANNAN J. (ORAL)

1. The revision petition is against the order passed by the trial Court in a suit filed for recovery of possession by the respondent who is admittedly the owner of the premises. There has been an agreement between the parties under the terms of which the property has been granted in respect of two parcels of land through a document styled as licence. The landlord's contention is that the period of licence has expired and the continuance in possession by the defendant was

unlawful and was liable to pay for use and occupation. The suit is, therefore, for recovery of possession and recovery of arrears of licence fee. The defendant has filed a suit for declaration that the document styled as licence is really a document of lease and for an injunction restraining the landlord from in any manner interfering with his possession. The attempt of the defendant through his own suit is that in relation to a property where the Rent Control Act is applicable, the suit for recovery of possession will not be competent.

2. Pending the suit, the landlord has filed an application under Order 15 Rule 5 CPC for a direction to make the payment of the arrears of licence fee and the objection by the tenant was that he is not licensee and the law does not provide for any such direction. He would, further, contend that the landlord had caused disconnection of electricity service that resulted in the defendant having to pay the electricity charges for all the buildings owned by the landlord including the buildings in which he has no interest. The electricity charges paid were to the tune of ₹ 9 lacs and according to him, the said amount would require an adjustment. It is the further contention of the defendant that the amount has been calculated by the petitioner @ ₹ 29,700/- for one parcel and ₹ 4400/- for another parcel of building and this is not an admitted amount payable. There are several adjustments that have to be made and the landlord cannot have the calculation worked out in the manner that he has done. The most potent objection, according to the tenant, is that the first application filed by the landlord was already disposed of on 03.12.2009 when the tenant had paid all the amount which according to the landlord fell in arrears and the landlord,

who had received the money was barred from making a plea that there was still arrears left and payable. The counsel would contend that an adjudication under Order 15 Rule 5 CPC that rent is payable will literally pre-judge the issue of what is required to be decided in his own suit filed for a declaration that the licence deed is illegal and that it should be construed only as a lease deed.

3. I had heard the case at length on 28.05.2015 and reserved the case for judgment. I had doubt in my mind whether an application under Order 15 Rule 5 CPC was competent in a situation where the plaintiff had a contention that it was only a licence and could be used only by a landlord in respect of lease-hold premise where the Rent Act was not applicable. I reopened the case suo motu and directed argument to be placed before this Court today.

4. Learned counsel for the petitioner seeks for further time to make his submission and would state that the counsel arriving from Delhi has some inconvenience. I do not find the request to be appropriate, for, he had full benefit of his arguments at the previous hearing and the case is reopened for a limited purpose of considering whether Order 15 Rule 5 CPC could be invoked or not. I, therefore, reject the plea and asked the counsel Mr. Anish Gautam to make his submissions. The counsel would not really respond to the particular query which I have brought for a fresh appraisal now regarding the maintainability of application under Order 15 Rule 5 CPC but would repeat whatever was argued earlier and what I have already extracted above.

5. I have heard the counsel appearing on behalf of the respondent about the maintainability of the petition and the counsel

points out that Order 15 Rule 5 CPC containing the Punjab and Haryana High Court amendment makes a reference to not merely a suit for rent but also for recovery of possession for use and occupation. The explanation (3) contained under Order 15 Rule 5 CPC makes reference to the expression monthly due as meaning the amount due every month whether as rent or compensation for use and occupation at the admitted rate of rent (emphasis supplied). The counsel had argued that a continuance in possession by a licensee beyond the licence period would amount to a claim for compensation for amount due and it should, therefore, be understood that Order 15 Rule 5 CPC could apply also to cases of licence where the landlord sues for recovery of possession. The counsel would refer me to judgment of the Bombay High Court in *Sangeeta Prints Vs. Hemal Prints and others AIR 1986 Bom 423* (Sujata V. Manohar, J. as she then was) dealing with a case of Presidency Small Cause Courts Act under Section 41 that contained a similar provision. The Court was examining the issue of a direction for payment of compensation for use and occupation when Section 41 contemplated only a suit for recovery of rent for use and occupation. The Court was adopting a reasoning that even a licensor will have a right to resort to the provisions and claim damages for use and occupation. The Court also dealt with a similar power available to the Court under Order 39 Rule 10 CPC that makes possible a direction to be issued by the Court to a person who holds the property in trust or who admits his liability to pay a sum for the property for use and occupation.

6. I would find that the bare provisions of Order 15 Rule 5 CPC that makes reference to compensation for use and occupation itself

would take care of a claim by a licensor for recovery of possession and for damages for use and occupation to govern his case for the applicability of the provision. The decision of Bombay High Court would lend further credibility to the plaintiff's contention that he is so entitled.

7. I had even at previous hearing at the conclusion of the arguments sought assistance from the respective counsel to give me a memo of calculation of what the arrears of rent were. The revision petitioner would explain that he has already given a memo of calculation when the revision petition was filed referring to the net amount payable as ₹ 1,46,058/-. In the memo of calculation, the petitioner would make deduction of 30% on account of amenities not provided per month to the tune of ₹ 7,97,940/- and the electricity charges and water charges to the tune of ₹ 9,18,299/- which the petitioner was compelled to pay when he was not liable to pay. I would find that apart from the deductions which the statute permits, if the tenant were to contend that amenities are not being provided and therefore, there ought to be deduction @30%, it is really in the nature of a counter claim or adjustment which will be adjudged by the Court before which the case is pending. There is no scope while considering Order 15 Rule 5 to apply any deductions in the light of express provisions brought through the explanations under Order 15 Rule 5 CPC which reads as follows:-

“Explanation 1. The expression “first hearing” means the date for filing written or for hearing mentioned in the summons or where more than one of such dates are mentioned, the last of the dates mentioned.

Explanation 2. The expression “entire amount admitted by him to be due” means the entire gross amount whether as rent or compensation for use and occupation, calculated at the admitted rate of rent for the admitted period of arrears after making no other deduction except the taxes, if any, paid to a local authority, in respect of the building on lessor's account.

Explanation 3. The expression “monthly amount due” means the amount due every month, whether as rent or compensation for use and occupation at the admitted rate of rent, after making on other deduction except the taxes, if any, paid to a local authority, in respect of the building on lessor's account.”

This would clearly show that there could be no deduction except taxes paid to the local authority and any other adjustment or deduction which the tenant pleads for cannot be a matter for consideration at this stage.

The counsel appearing for the respondents would circulate the details of alleged arrears which I will reproduce as under:-

1.	Admitted monthly licence fee	Rs.29700+4400=34,100
2.	Amount payable from December 2007 to July 2014 (date of impugned order) after deduction of the following amount received: Rs.82750+25000+65825+1,00,000+1,14,614	Rs.23,39,811/-
3.	Amount of admitted fee/rent payable from August 2014 to May 2015 @ Rs.34,100/- (10 months)	Rs.34,100x10=Rs.3,41,000
4.	Total amount payable till May 2015 @ Rs.34,100	Rs.23,39,811+Rs.3,41,000= Rs.26,80,811/-
5.	9% interest as mandated by Order 15 Rule 5(1) CPC for 7 years 5 months	Rs.26,80,811x9%x7 years 5 months=Rs.17,89,441.343
6.	Total admitted licence fee amount payable for 7 years, 5 months along with interest @9%	Rs.26,80,811+Rs.17,89,441 =Rs.44,70,252/-
7.	Amount deposited with the Registrar, Punjab and Haryana High Court	Rs.23,39,811/-
8.	Amount due from the petitioner	Rs.44,70,252-23,39,811= Rs.21,30,441/-

I would find no contradiction by any argument except a wild statement that the amount claimed is excessive and it is not an admitted amount.

I cannot see how an amount mentioned in a document signed between the parties is not spelling out an amount that is admitted. The

challenge before the Civil Court is the character of possession and the nomenclature that could be employed for the landlord that he is paying as consideration for possession. There cannot be a challenge to the amount stipulated in the document as payable between the parties. The calculation which has been brought out reflects the amounts which are payable and I have no document to discredit the calculation given and to state that the amount has not given credit or adjustment to any amount which he has paid. The amounts paid have been duly accounted for in the memo of calculation and I, therefore, reckon that the amount payable as on May, 2015 was ₹ 21,30,441/- and there will be additional amount for the further period of one month by an additional amount of ₹ 34,100/-. The total amount would, therefore, be ₹ 21,30,441/- +34,100/- that totals to ₹ 21,64,541/-. The amount shall be paid within four weeks failing which the defence is ordered to be struck off and the landlord will be entitled to be put in possession in the manner contemplated under Order 15 Rule 5 CPC.

8. Needless to state that determination of liability is only for the purpose of disposal of application under Order 15 Rule 5 CPC and the petitioner will be at liberty to canvass for any of the contentions about the character of his possession, the legitimacy of his possession as not requiring to pay damages for use and occupation or his plea that the amount that is paid was not an admitted quantum and that no amount at all was payable or any of the payments which he has made were not duly accounted for. There is no merit in the revision petition and the revision petition is dismissed with costs of ₹ 3500/- payable by the petitioner to the respondent but with the above liberty.

9. There is also a contempt petition at the instance of the landlord in COCP No.69 of 2015. I do not think any separate directions are necessary. The order passed in the civil revision itself would govern the interest of parties. The contempt petition is also dismissed. The amount deposited by the petitioner which has been referred to in the memo of calculations is permitted to be withdrawn by the landlord-respondent.

(K. KANNAN)
JUDGE

July 17, 2015
Pankaj*