

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 7852 of 2014 (O&M)
Date of Decision : 19.02.2015

Gurmeet Singh

....Petitioner

Versus

Amrit Pal Kaur Deol

....Respondent

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

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

Present: Mr. Suveer Sheokand, Advocate
for the petitioner.

Mr. Narinder Kumar Vadehra, Advocate
for the respondent.

R.P. Nagrath, J.

Petitioner has invoked the jurisdiction of this Court under Article 227 of the Constitution of India seeking to set aside the order dated 04.11.2014 passed by the Executing Court. Respondent filed an eviction petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (for short "the Act"), seeking eviction of the petitioner from the shop in question on the grounds *inter alia*; (i) that the petitioner is in arrears of rent @ ₹ 125/- per month w.e.f. May, 2010; and (ii) that the demised premisses has become unfit and unsafe for human habitation.

2. The ground of premises having become unfit or unsafe for human habitation was not proved. Learned Rent Controller in the judgment dated 12.07.2013 (Annexure P-1) held that the

petitioner-tenant has not paid the rent since June, 2010 upto the decision of the eviction petition and on the basis of aforesaid finding, learned Rent Controller partly allowed the eviction petition qua the relief of arrears of rent with costs. It was further directed that the petitioner would pay the arrears of rent within two months from the date of the order passed by learned Rent Controller and failing to deposit the aforesaid amount, the petitioner would be liable to be evicted from the demised premises. This order of the learned Rent Controller was not challenged further and the same, thus, attained finality.

3. Aforesaid period of two months expired by about 12.09.2013. As per memo of costs attached with the judgment of the learned Rent Controller, the cost of the petition was assessed @ ₹ 640/-. Thereafter, the decree-holder filed execution of the order of the learned Rent Controller upon which warrants of possession were issued but the petitioner informed the Executing Court that the amount of ₹ 5000/- was deposited on 03.09.2013 towards arrears of rent and it was stated that the petitioner-JD had complied with the order of the learned Rent Controller regarding deposit of the arrears of rent within two months. Thereafter, the petitioner filed an application for modification of the order dated 12.07.2013, which was dismissed by the learned Rent Controller vide impugned order dated 04.11.2014 and the petitioner has filed the instant petition aggrieved by the aforesaid order.

4. I have heard learned counsel for the parties, perused

the impugned order and also the paper-book.

5. It is quite apparent that the arrears of rent @ ₹ 125/- per month were due at least for a period of 38 months upto the date when the final order was passed by the Rent Controller and that amount comes to ₹ 4750/-. The petitioner was also required to deposit an amount of ₹ 640/- towards costs and the total amount that was required to be deposited with the learned Rent Controller or paid to the respondent was ₹ 5390/- but the amount tendered within the stipulated period was ₹ 5000/- only. Therefore, there was indisputably deficiency by an amount of ₹ 390/-. In view of the direction contained in the default clause by the learned Rent Controller, the eviction was supposed to follow.

6. Learned counsel for the petitioner contended that the petitioner is always prepared to deposit the amount of ₹ 390/- because mistake arose due to the order of learned Rent Controller dated 12.07.2013 being not specific with regard to deposit of costs alongwith arrears of rent within a period of two months. This contention cannot be sustained because there was a categorical direction of the learned Rent Controller while partly allowing the petition qua the relief of arrears of rent and that was with costs. There was no scope of finding any ambiguity in the aforesaid direction.

7. Alive to the aforesaid situation, the petitioner also filed an application under Sections 151/152 of the Code of Civil Procedure for amendment in the judgment of the Rent Controller.

It was stated that the petitioner had deposited the amount towards arrears of rent but inadvertently could not deposit the amount of costs. It was further pleaded that since a specific period has been mentioned in the order as such necessary amendment was required to be made in the judgment by deleting the words “a period of two months from today” in the 4th line from bottom of the judgment. Learned Rent Controller declined the prayer on the ground that being the Executing Court it cannot go beyond the terms of the judgment passed by the learned Rent Controller.

8. I find that the learned Executing Court has rightly observed that the period specified for deposit of the arrears of rent alongwith costs cannot be extended in the eyes of law.

9. In **Rakesh Wadhawan and others vs. M/s Jagdamba Industrial Corporation and others, 2002 (5) SCC 440**, Hon'ble Supreme Court held that while exercising discretion for affording the tenant an opportunity of making good the deficit, one of the relevant factors to be taken into consideration by the Controller would be, whether the tenant has paid or tendered with substantial regularity the rent falling due month by month during the pendency of the proceedings. It was not a disputed question in the present case that the rent was due from June, 2010 upto the decision of the rent petition by the learned Rent Controller.

10. The bone of the contention of the learned counsel for the petitioner was that the order of the learned Rent Controller does not direct the petitioner-tenant to deposit the amount of costs

also. Ultimately, prayer was made in the instant petition that the petitioner-tenant is ready and willing to pay ₹ 640/- as costs, having already deposited the amount of arrears of rent on 03.09.2013. This contention cannot be sustained in the eyes of law. There is thus no merit in the instant petition and the same is dismissed.

February 19, 2015
jk

(R.P. NAGRATH)
JUDGE