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

**CR No.309 of 2016 (O&M)
Date of Decision : 18.03.2016**

Rakesh Kumar

..... Petitioner

Versus

Pawan Kumar

..... Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. G.L. Bajaj, Advocate for the petitioner.

Mr. Abhishek Singla, Advocate for the respondent.

1. Whether Reporters of 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?

AJAY TEWARI, J. (Oral)

This revision petition has been filed against the concurrent orders of the Courts below allowing ejectment of the petitioner-tenant from the demised premises.

On 10.03.2016 the following order was passed:-

“Learned counsel on instructions from his client has stated that notwithstanding the legal issues which has been raised in the present case the petitioner is willing to vacate the premises in dispute at the end of the lease period.

Notice of motion.

Let the respondent be served through his counsel in the Executing Court by way of dasti process.

Adjourned to 18.03.2016.

In the meantime, the dispossession of the petitioner shall remain stayed.

To be shown in the urgent list.”

Despite the best efforts made by learned counsel for the parties, no settlement has been made.

Admittedly the provisional rent was assessed by order dated 07.08.2015 and the case was adjourned to 04.09.2015 for making the payment. On that date the petitioner tendered a cheque for the provisional rent assessed but requested that there was not enough balance in the account, and the respondent should present the cheque for encashment on 07.09.2015 but the respondent-landlord refused to receive the cheque on the ground that the same is not a valid tender. The appeal having been dismissed the petitioner is before this Court.

Learned counsel for the petitioner has argued that infact the statement attributed to the petitioner regarding there being no sufficient balance is incorrect and once the petitioner had tendered a cheque the same had to be accepted by the landlord since this was the normal mode of payment through cheque.

As regards the first argument, the learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the matter of ***Bhavnagar University vs. Palitana Sugar Mill (P) Ltd. and others, reported as (2003) 2 Supreme Court Cases 111***, wherein their Lordships while relying upon the judgment in the matter of ***State of Maharashtra v. Ramdas Shrinivas Nayak, reported as (1982) 2 SCC 463*** have observed as follows:-

“When we drew the attention of the learned Attorney-General to the concession made before the High Court, Shri A.K. Sen, who appeared for the State of Maharashtra before the High Court and led the arguments for the respondents there and who appeared for

Shri Antulay before us intervened and protested that he never made any such concession and invited as to peruse the written submissions made by him in the High Court. We are afraid that we cannot launch into an inquiry as to what transpired in the High Court. It is simply not done. Public policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. Judgments cannot be treated as mere counters in the game of litigation. We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in Court.....”

As regards the other arguments also, it has to be noticed that 04.09.2015 was the date for making the payment. Thus the petitioner had to make arrangements as per which the provisional rent would be credited to the respondent-landlord on the date fixed i.e. 04.09.2015. For this either the petitioner could have paid the provisional rent by cash or he could have tendered a draft and in those circumstances it would have been held that the tender was valid but by presenting a cheque (which would at the earliest be credited on the next date) it can not be held that valid tender was made.

Resultantly, the petition is dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

March 18, 2016

pooja sharma-I/jyoti