In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.4653 of 2016
Date of Decision:July 25.7.2016

Sat Pal Bansal

---Petitioner

vs.

Sandeep Kumar and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr.Sunny K.Singla, Advocate
for the petitioner

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

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Rekha Mittal, J.

The present petition has been directed against order dated 16.4.2016 passed by the Civil Judge (Junior Division), Nabha whereby the application filed by the petitioner under Order 15 Rule 5 of the Code of Civil Procedure (in short “CPC”) in a suit for mandatory injunction, has been dismissed.

The present is a dispute between a father, his son and daughter-in-law with regard to a house situated at Beer Mehs, Shiva Enclave, Nabha. The petitioner (father) has prayed for a decree of mandatory injunction directing the respondents/defendants to vacate two rooms shown in red colour with attached facilities given to them as licencees in the year 2005 @ of Rs. 2000/- per month which was later enhanced to Rs. 4000/- per month. It is further pleaded that plot measuring 1 kanal 17 marlas was purchased by the petitioner vide registered sale deed dated 4.5.2000 and thereafter he constructed the kothi in the year 2003.

The application under Order 15 Rule 5 CPC was filed with the allegations that the respondents failed to pay the licence fee for use and occupation of the portion in question at the rate of Rs. 4000/- per month with effect from February 2010 onwards which they are liable to pay with interest at the rate of 9% per annum failing which they are liable to be evicted from the premises in question.

After filing of reply by the respondents and having heard counsel for the parties, the trial court dismissed the application primarily on two counts viz-a-viz (1) there exists no relationship of lessor and lessee between the parties and (2) the property subject matter of the suit is not situated in rural area, therefore, the provisions of Order 15 Rule 5 CPC are not attracted.

Counsel for the petitioner has submitted that the provisions of Order 15 Rule 5 CPC would be attracted even in the case of there being relationship of licensor and licencee between the parties, therefore, the trial court has committed a serious error rather illegality in rejecting the claim by holding that the first essential ingredient of order 15 Rule 5 is not fulfilled. In support of his contention, he has referred to judgment of this Court **On-Dot Couriers and Cargo Limited vs. Gee Kay Foundation and others 2015(4) RCR (Civil) 1049.** With regard to the second ground, it is submitted that there is no such requirement in law that the property must be situated in a rural area.

I have heard counsel for the petitioner, perused the paper book particularly the order impugned.

The petitioner has claimed himself to be owner of the suit house on the premise that land underneath the house was purchased by him in the year 2000 and the house was constructed in the year 2003 and the respondents are residing in a part of the suit house as licencees. On the contrary, plea of the respondents is that construction on the plot purchased by the petitioner was raised with joint funds of the petitioner and respondent No. 1. The respondents denied their status as licencees and further their liability to pay any licence fee. There is nothing on record suggestive of the fact that the respondents ever paid any licence fee either at the of Rs. 2000/- or Rs. 4000/- per month.

Rule 5 of Order 15 added by way of amendment by the State of Punjab provides for striking off defence for failure to deposit admitted rent. A relevant extract from Rule 5 reads as follows:-

> "In any suit by a lessor for the eviction of a lessee after the determination of his lease and for the recovery from him of rent or compensation for use and occupation, the defendant shall, at or before the first hearing of the suit, deposit the entire amount admitted by him to be due together with interest thereon at the rate of nine per cent per annum and whether or not he admits any amount to be due, he shall throughout the continuation of the suit regularly deposit the monthly amount due within a week from the date of its

> accrual, and in the event of any default in making the deposit of the entire amount admitted by him to be due or the monthly amount due as aforesaid, the Court may, subject to the provisions of Sub-rule **(2)**, strike off his defence.

A plain reading of the aforesaid extract makes it evident that the defendant has been obligated to deposit the entire amount admitted by him to be due together with interest thereon at the rate of 9% per annum and whether or not he admits any amount to be due, he shall throughout continuation of the suit regularly deposit the monthly amount due within a week from the date of its accrual, and in the event of any default in making the deposit of the entire amount admitted by him to be due or the monthly amount due as aforesaid, the Court may strike off his defence in case he fails to deposit the arrears at or before the first hearing of the suit and monthly amount due within a week from the date of its accrual. Explanation 2 explains 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 deduction of taxes, if any, paid to a local authority in respect of the building on lessor's account and the amount, if any, deposited in any Court.

Explanation 3 explains 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 deduction of taxes, if any, paid to a local authority, in respect of the building on lessor's account.

In the case at hand, the respondents have categorically denied the allegations that they are in possession of the premises in question as licencees under the petitioner. They have further denied their liability to pay any licence fee.

On due consideration and conjoint reading of Rule 5 (1) and explanations 2 and 3 appended thereto, I find myself unable to accept the submissions that the respondents are liable to deposit any amount in compliance with the provisions of Rule 5 of Order 15 CPC even if it is accepted that the term 'lease' is to be stretched to include 'licence' for the purpose of payment of compensation for use and occupation after license has been terminated/revoked. In the given facts, the petitioner cannot derive any advantage to his contention from the judgment in **On-Dot Couriers and Cargo Limited's case (supra).**

However, the second reason that weighed with the trial court to dismiss the application is not provided for under rule 5, therefore, the order to that extent is erroneous.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

July 25, 2016
paramjit

Whether speaking/reasoned : yes/no

Whether reportable : yes/no