

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 560 of 2016 (O&M)

Date of Decision: 30.05.2016

Frankfinn Aviation Services Pvt. Ltd.

... Petitioner(s)

Versus

M/s Sauch Info Services Pvt. Ltd.

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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

Present: Mr. Akshay Bhan, Senior Advocate
with Mr. Ajit Nair, Advocate
for the petitioner(s).

Mr. D.S.Patwalia, Senior Advocate
with Mr. B.S.Patwalia, Advocate
for the respondent(s).

Shekher Dhawan, J.

CM-10503-CII-2016

Learned senior counsel for the respondent submitted that he is ready to argue the main petition.

As such, no separate order is required to be passed in the present application and the same is disposed of.

The main petition is taken up on the board of this Court for hearing arguments today itself.

CR-560-2016

Present petition under Article 227 of the Constitution of India for setting aside order dated 21.12.2015, passed by learned Civil Judge (Junior Division), Gurgaon, whereby application under Order 15 Rule 5 CPC, filed by the respondent/plaintiff was accepted and defence of the petitioner/defendant was struck off on account of non-payment of rent.

Relevant facts of the case that petitioner had taken on rent fourth, fifth & sixth floors of the property in dispute on lease on the basis of lease deed dated 17.8.2011. As per petitioner, possession of the leased premises was not handed over, whereas the case of respondent that possession was handed over on the same day and payment of rent was being made upto February, 2012 and thereafter, petitioner failed to make the payment of admitted rent even.

Learned senior counsel for the petitioner, while assailing the impugned order, submitted that the Court below has not considered the facts that in terms of lease deed dated 17.8.2011, possession was never handed over to the petitioner. Being aggrieved of that, Civil Suit No. 314 dated 6.9.2012 was filed for specific performance of the lease deed dated 17.8.2011. Thereafter, respondent filed Civil Suit No. 14 dated 9.1.2013 for seeking possession of leased premises and for recovery of ₹ 56,40,000/-. Undisputedly, civil suit was filed earlier by the present petitioner seeking direction from the Court to the respondent to hand over peaceful possession of the leased property and in the alternative for refund of amount paid by them. So, it was not a case of payment of admitted rent having not been paid to the respondent. Rather, petitioner is aggrieved of the fact that

respondent already received the payment on account of rent and failed to deliver possession of the leased premises and for that purpose, petitioner had to file civil suit before the Court below.

Learned senior counsel for the petitioner also submitted that order on application under Order 15 Rule 5 CPC cannot be passed in a mechanical manner. Rather, the same can be filed in case of suit for recovery of possession and not in any other suit like suit for mandatory injunction, whereas in the instant case, the main suit filed by the respondent was for mandatory injunction. On this point, reliance was placed upon the judgment rendered by this Court in *M/s Fastrack Computing Limited and Others v. Col. Govinder Singh (Retd.) and Others 2014(9) RCR (Civil) 3353*.

Learned senior counsel for the petitioner also submitted that order on application under Order 15 Rule 5 CPC can be passed only if there is a case of default in making payment of rent and order on such an application is not to be passed in a routine and mechanical manner because the same is penalty to the person against whom such an order is passed. On this point reliance has been placed upon the judgment rendered by the Hon'ble Apex Court in *Bimal Chand Jain v. Gopal Agarwal 1981(2) RCR (Rent) 314* and view taken by this Court in *M/s Saras Paper Pack v. Shyam Sunder 2001(1) RentLR 580*, *Raj Kumar Mittal v. Arvind Kumar Jain 2003(1) RentLR 395* and *Narinder Pal v. Surinderjit Singh and Others 2011(2) PLR 576*.

Learned senior counsel for the respondent submitted that possession of the demised premises was handed over on 10.8.2011. Even rent of the leased premises was paid upto February, 2012, but thereafter

was issued in this regard on 8.7.2012 and even in reply, the plea was taken that payment of rent has been made from March, 2012 to July, 2012. Thereafter, respondent had to issue notice dated 8.7.2012 in terms of Clause No. 12.4(ii) of the lease deed serving three months' termination notice. It was not a question of handing over possession to the petitioner. Rather, this plea has been taken just to avoid the liability. The rate of rent is admitted as per lease deed and the payment has not been made despite notice and it amounts to non-payment of admitted rent and in case of failure to deposit the arrears of rent together with interest, the order for striking off defence of the tenant is to be passed. Such a view was taken by the Hon'ble Apex Court in ***Anandi Devi v. Om Parkash 1987(Sup) SCC 527***. Identical view was taken by this Court in ***Mrs. Ablinder Chawla v. R.K.Gupta 1994(2) RCR (Rent) 145***, ***Jai Bhagwan v. Chandra Mohan and Others 1995(2) RCR (Rent) 373***, ***Gurjit Singh Gill v. Major Paramjit Singh Gothra 2004(3) PLR 474*** and ***Jagdev Singh v. Balwant Kaur Grewal 2012(2) RCR (Rent) 238***.

Learned senior counsel for the respondent further submitted that as per provisions of Order 15 Rule 5 CPC, Explanation 3 thereto, the Court is certainly required to consider the representation, if the same is made within ten days of the first hearing. But that has not been done in the case in hand. For ready reference, relevant provisions of Order 15 Rule 5 CPC read as under:-

"5. Striking off defence for failure to deposit admitted rent, etc.— (1) *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.

Explanation 1.— The expression "first hearing" means the date for filing written statement 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 and the amount, if any, paid to the lessor acknowledged by the lessor in writing signed by him and the amount, if any, deposited in any Court under section 30 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972.

Explanation 3.— (1) 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 no other deduction except the taxes, if any, paid to a local authority, in respect of the building on lessor's account.

(2) Before making an order for striking off defence, the Court may consider any representation made by the defendant in that behalf provided such representation is made within 10 days of the first hearing or, of the expiry of the week referred to in sub-section (1), as the case may be.

(3) The amount deposited under this rule may at any time be withdrawn by the plaintiff.

Provided that such withdrawal shall not have the effect of prejudicing any claim by the plaintiff disputing the correctness of the amount deposited:

Provided further that if the amount deposited includes any sums claimed by the depositor to be deductible on any account, the Court may require the plaintiff to furnish the security for such sum before he is allowed to withdraw the same."

The Court below has rightly considered all these aspects and passed the impugned order. Present petition is without any merit and the same be dismissed.

Having considered the submissions made by learned counsel for the parties; appraisal of the record of the case and grounds of the petition and also gone through the case laws cited by learned counsel for the parties, this Court is of the considered view that most of the facts are not disputed that lease deed was executed on 17.8.2011, whereby fourth, fifth & sixth

and the rent was to be paid on monthly basis. The period of lease was for nine years from 10.8.2011. The description of the property has also been mentioned. The petitioner has also filed Civil Suit No. 314 dated 6.9.2012 titled as “M/s Frankfinn Aviation Services Private Limited v. M/s Sauch Info Services Private Limited and Another” for specific performance, declaration and for permanent and mandatory injunction *inter alia* taking the plea that terms of the lease on the part of respondent were not complied with and actual possession was not handed over to the petitioner. Subsequently, Civil Suit No. 14 dated 9.1.2013 titled as “M/s Sauch Info Services Pvt. Ltd. v. M/s Frankfinn Aviation Services Pvt. Ltd.” was filed by the respondent herein for possession, recovery, permanent injunction and mandatory injunction *inter alia* taking all the pleas that lease deed was duly executed with detailed terms & conditions. Even rent was paid by the tenant upto February, 2012. But rent from March, 2012 till the date of filing of the suit was not paid and on that basis, application under Order 15 Rule 5 CPC for striking off the defence of the defendant on account of non-payment of admitted rent was filed and the said application was accepted. This fact is also not disputed that the Court below is to consider the application under Order 15 Rule 5 CPC while taking into consideration all the attending facts and material available on the file and order is not to be passed in a mechanical manner.

However, in the instant case, payment of admitted rent has not been made after March, 2012, whereas the payment was made till February, 2012. The contention raised by the petitioner that actual possession was not delivered to the petitioner, was not believable and the Court below has

handed over to the petitioner and this fact is further fortified on the ground that petitioner continued to make payment till February, 2012. Therefore, it does not sound to the reasoning at all that tenant would continue to make payment of rent for a sufficient long period and that too at a substantial rate of rent without getting the possession even. Hence, it was certainly a case of non-payment of admitted rent just to avoid the liability and the provisions of Order 15 Rule 5 CPC have been incorporated so as to protect the interest of landlord in such cases. Such a view has been taken by the Hon'ble Apex Court in case *Anandi Devi v. Om Parkash* (*supra*) and view taken by this Court in view was taken by this Court in cases *Mrs. Ablinder Chawla v. R.K.Gupta, Jai Bhagwan v. Chandra Mohan, Gurjit Singh Gill v. Major Paramjit Singh Gothra* and *Jagdev Singh v. Balwant Kaur Grewal* (*supra*).

Another point involved in this case that as per Order 15 Rule 5 CPC, Explanation 3 thereto, representation was required to be made by the petitioner within ten days of the first appearance but that has also not been made. The Court below has rightly accepted the application under Order 15 Rule 5 CPC.

Resultantly, present petition is without any merit and the same stands dismissed.

(Shekher Dhawan)
Judge

May 30, 2016

“DK”