

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

Civil Revision No.6068 of 2016

Date of Decision: December 06, 2016

Lt.Col.Inderjit Singh Hira

...Petitioner

Versus

Jasleen Kaur & others

...Respondents

**CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE**

Present: Mr.Rakesh Gupta, Advocate,  
for the petitioner.

Mr.Kamna Kumar Jain, Advocate,  
for the respondents.

Mr.P.S.Bajwa, DAG, Punjab,  
for the State.

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**AMIT RAWAL, J. (Oral)**

Petitioner-plaintiff is aggrieved of the impugned order, whereby the application moved under Order 15 Rule 5 CPC as per amendment applicable to the State of Punjab for seeking striking off the defence of the defendants in not paying the use and occupation charges of the admitted rent, has been dismissed.

Mr.Rakesh Gupta, learned counsel for the petitioner-plaintiff has drawn the attention of this Court to the aforementioned provisions, which read as under:-

*“Punjab.- In order XV, after rule 4, insert the following rule, namely:-*

*“5. Striking off defence for failure to deposit admitted rent.-*

*(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 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 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 and the amount, if any, deposited in any Court.*

*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 on 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, that 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 or any account, the Court may require the plaintiff to furnish the security for such sum before he is allowed to withdraw the same.”*

On going through the aforementioned provisions, Mr.Gupta submits that as per the lease deed dated January, 2014, it was agreed that after the expiry of fitment period of three months, respondent Nos.1 to 3 were mandatorily to pay rent @ ₹40,000/- per month as the lease was for a period of twenty years. A notice dated 21.10.2014 under Section 106 of Transfer of Property Act was served for determining the lease and the arrears of rent along with the usage and occupation charges @ ₹1,00,000/- per month w.e.f. 1.5.2014. The plaintiff filed the civil suit on 28.1.2015. The defendants are in arrears of rent for the aforementioned period, i.e., from the expiry of the three months of fitment period and, therefore, the Court was required to strike out the defence of the defendants in complying provisions of law, *ibid*.

Mr.Kamna Kumar Jain, learned counsel for the respondent-defendants, on instructions, submits that the respondents are willing to pay the admitted rent @ ₹40,000/- per month w.e.f. 1.12.2014. Prior to the legal notice (Annexure P-4), petitioner-plaintiff had also sent legal notice dated 9.9.2014 that he did not claim any rent, therefore, the application in hand was totally misconceived.

As regards the claim qua arrears of rent w.e.f. 1.5.2014, the work had not completed and, therefore, the plaintiff is not entitled to the same.

I have heard the learned counsel for the parties and appraised

the paper book.

In the absence of the payment of the admitted rent, which is prescribed in the draft lease agreement, the Court was enjoined upon an obligation to strike out the defence of the defendants and this is precisely what has been projected on behalf of the plaintiff by Mr.Gupta. Since Mr.Jain has suffered the statement, I do not deem it appropriate to ponder upon the applicability of the aforementioned provisions as the same are being adhered to or not, but further I deem it appropriate to grant one month's time for depositing the entire arrears @ ₹40,000/- per month along with interest @ 9% per annum w.e.f. 1.12.2014 to 31.12.2016. The respondent-defendants herein would continue to deposit the amount due for every month strictly in accordance with the provisions referred supra.

As regards the claim w.e.f. 1.5.2014 till 30.11.2014, the respondent-defendants are directed to furnish adequate security to the satisfaction of the Court below and the petitioner-plaintiff in case wants to withdraw the amount, will furnish the security and the entitlement of the same shall be determined at the final stage of the suit. The Court shall take into consideration the consequential effect strictly as per the provisions of law, ibid as the notice dated 9.9.2014 does not indicate demand qua arrears of rent, therefore, I deem it appropriate that they shall deposit the amount and the plaintiff shall furnish security.

With the aforementioned observations, the impugned order is set-aside and the revision petition stands disposed of.

**December 06, 2016**  
**ramesh**

**( AMIT RAWAL )**  
**JUDGE**

**Whether speaking/reasoned**  
**Whether Reportable:**

**Yes/No**  
**Yes/No**