

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 7930 of 2015

Date of Decision: 06.04.2016

Smt. Seema Panwar

... Petitioner(s)

Versus

Azad Singh

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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| 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. Rajbir Sehrawat, Advocate
for the petitioner(s).

Mr. Aditya Jain, Advocate
for the respondent(s).

Shekher Dhawan, J.

Present petition has been filed under Article 227 of the Constitution of India for setting aside order dated 23.10.2015 (Annexure P8), passed by learned Civil Judge (Junior Division), Gurgaon whereby the defence of the petitioner/defendant was struck off.

I have heard learned counsel for the parties and have gone through the entire record carefully including the impugned order passed by the Court below.

Facts relevant for the purpose of decision of the present petition that respondent/plaintiff filed the main suit for possession by way of ejectment of the petitioner/defendant from the premises No. LG-16 on lower ground floor in the shopping mall called "Hong Kong Bazaar", Sector 56, Gurgaon, owned by the plaintiff. The said premises was taken on rent vide lease deed bearing vasika No. 15581 dated 1.9.2010 for a period of 96 months ending 11.9.2018 on payment of ₹ 65,300/- per month commencing from 12.9.2010, besides ₹ 2,00,000/- as security. Defendant failed to pay the rent w.e.f. 1.3.2011 despite demands, besides maintenance charges since 12.9.2010 and electricity charges. Defendant issued seven cheques of ₹ 65,300/- each on 12.3.2011 but the same were dishonoured. Even cheque of ₹ 4,50,000/- dated 4.8.2011 was also dishonoured. Legal notice under Section 106 of the Transfer of Property Act, 1882 (hereinafter referred to as "the Act") was issued on 16.9.2011 thereby terminating the tenancy and despite service of notice, defendant failed to vacate the tenanted premises and as such necessity of the suit for recovery of ₹ 9,07,100/- along with interest at the rate of 18% per annum and the amount for use & occupation of the premises from the date of filing of the suit till vacation of the suit premises.

Defendant contested the suit *inter alia* taking the plea that payment of rent has already been made but no receipt was being issued by the landlord and prayed that suit be dismissed.

From the pleadings of the parties, issues were framed by

the trial Court. During pendency of the suit, an application, under Order 15 Rule 5 CPC for striking off defence of the petitioner/defendant was moved and the Court below, after considering the grounds taken in the application and reply thereto, accepted the same.

Learned counsel for the petitioner submitted that the Court below has not considered the matter in controversy in its true perspective and decided the application with the assumption that the provisions of Order 15 Rule 5 CPC are mandatory, whereas the same are directory. On this point, reliance was placed upon the judgment rendered by this Court in case ***Raj Kumar Mittal v. Arvind Kumar Jain 2003(1) RCR (Rent) 63.***

Learned counsel for the petitioner also submitted that before passing the impugned order, the Court below has not passed any order asking the petitioner to make payment of amount due, if any. No opportunity has been given to the petitioner to deposit the outstanding amount of lease money at the admitted rate before striking off his defence. On this point, reliance was placed upon the judgment rendered by this Court in case ***Narinder Pal v. Surinderjit Singh and Others 2011(3) RCR (Civil) 305,*** wherein such a view was taken.

While arguing on this point, learned counsel for the respondent submitted that conduct of the petitioner reflects that the payment of rent has not been made despite demands and legal notice. Earlier, petitioner had issued cheques with dishonest intentions and the same were dishonoured. Petitioner cleverly remained away from the proceedings of the Court and after passing of the *ex parte* order by the

Court below, she moved an application for setting aside the said order and the only purpose was not to pay any rent and to enjoy the premises and the Court below passed the order while taking into consideration all these facts and present petition is without any merit and the same be dismissed.

Learned counsel for the respondent further submitted that in case tenant is neither depositing the rent in compliance of Order 15 Rule 5 CPC nor making representation for condonation of default, defence of such a tenant is liable to be struck off. On this point, reliance was placed upon the judgment rendered by the Allahabad High Court in case ***Sri Ram Agarwal v. Smt. Sheela Devi 2005(2) RentLR 74.***

Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that as per perusal of Order 15 Rule 5 CPC, the defence of tenant is liable to be struck off in case of his failure to deposit the admitted rent. For ready reference, Order 15 Rule 5 CPC reads 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.

(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."

Admittedly, the payment of rent on admitted rent has not been made by the petitioner. The cheques, whichever were issued in favour of the respondent, were dishonoured and the Court below has already discussed all these facts in the impugned order. In such circumstances, petitioner cannot take such a plea that he was not given any opportunity to pay the rent, whichever was due to him. Rather she had been intentionally avoiding payment by making fraudulent acts of issuance of cheques without having sufficient funds in her bank account and remaining away from the Court and thereafter moved an application for setting aside *ex parte* proceedings, just to delay the proceedings of the case. Any person who is misusing the process of law is not entitled to seek any relief from the Court on the basis of equity. Petitioner had sought adjournments for effecting compromise and to make the payment of defaulted amount, but still payment was not made. Petitioner was proceeded against *ex parte* on three different dates and the said orders were set aside and she was allowed to join the proceedings and that fact reflects that the only intention of the petitioner was just to delay the proceedings of the matter.

More important fact to be mentioned that in this case also, on 29.3.2016, learned counsel representing the petitioner had sought adjournment for seeking instructions so as to make payment of rent amount, if any and at that time, it was made clear that the total amount of rent due towards the petitioner was ₹ 9,00,000/- and today on instructions from his client, learned counsel submitted that petitioner was not ready to make any payment. So, petitioner cannot take the plea

that she was not given any opportunity to make the payment of rent amount, rather she had been availing every opportunity to defer the case.

As per view taken by the Allahabad High Court in case ***Bal Krishna v. Ramanand Dixit and Another 2001 AIHC 3057*** and also by this Court in ***Gurjit Singh Gill v. Major Paramjit Singh Gothra 2004(2) RCJ 152***, I am of the view that the Court below has rightly passed the impugned order whereby defence of petitioner was struck off under Order 15 Rule 5 CPC.

In view of above discussion, present petition stands dismissed being devoid of any merit.

(Shekher Dhawan)
Judge

April 6, 2016
"DK"