

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

**CR No.855 of 2016 (O&M)
Date of Decision : 29.02.2016**

Piyush Gupta and another

..... Petitioners

Versus

Sanjiv Sharma and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Divanshu Jain, Advocate
for the petitioners.

Mr. Karan Nanda, Advocate
for the respondents.

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)

At the very outset, learned counsel for the respondent states that he is counsel for the respondents in the trial Court but despite having contacted them they are not coming forward. In the circumstances, the service upon respondents is deemed to be effected.

By this petition the petitioners have assailed the order of the Rent Controller dated 18.01.2016 declining to assess the provisional rent. As per the averments made in the petition the petitioners had inducted the respondents No.1 and 2 as their tenants in the premises in dispute w.e.f.

01.06.2014 to 31.03.2015 at a monthly rent of Rs.3,50,000/-. Till 31.12.2014 the rent was paid but thereafter the rent was not paid. Consequently, the instant petition was filed on 20.05.2015 claiming the rent with effect from that date. In reply, it was pleaded that w.e.f. 01.05.2015 the respondents No.1 and 2 who were the original tenant had sublet the premises to respondents No.3 to 5. In the written statement filed by the respondents No.1 and 2 it was admitted that they had taken the premises on rent w.e.f. 01.06.2014. It was further pleaded that the rent upto 31.03.2015 was paid and thereafter the premises were handed over back to the petitioners. As regards the respondents No.3 to 5, they took the plea that they had no connection with the premises and they were not in possession thereof. The Rent Controller declined the application for assessment of provisional rent on the ground that relationship of landlord and tenant was denied.

Learned counsel for the petitioners has argued that by this stratagem a double blow has been given to the petitioners. In the first place the rent is not being paid and in the second place the premises have been further sublet by the tenant. As per him, by the time the case comes to its final stages the rent would have amounted to crore of rupees and thereafter the respondents will vacate the premises and walk out after having cause huge loss to the petitioners. He has relied upon the judgment of this Court in the matter of *Shri Sai Enterprises vs. M/s Gallant Arcade Pvt. Ltd., reported as 2013(3) R.C.R. (Civil) 582* wherein it was held as follows:-

“After hearing learned Counsel for the petitioner(tenant) and perusing the paper book, this Court is of the considered view

that the present petition is devoid of any merit and the same deserves to be dismissed outrightly. In the present case, the facts speak for themselves and show the mala fide intention on part of the petitioner(tenant) who, in order to avoid its liability to pay the huge arrears of rent and remain in occupation of the property without payment of future rent as well, has taken a false plea of their being no relationship of landlord and tenant between the parties. The respondent(landlord) had placed on record the copy of the suit titled as Sai Enterprises Vs. Gallant Arcade in which the present petitioner has categorically admitted execution of a rent agreement between the parties and in that suit the present petitioner(tenant) had sought permanent injunction for restraining the respondent(landlord) from interfering in its peaceful possession over the demise premises. Thus, when once the tenancy is admitted between the parties, the petitioner(tenant) cannot be allowed subsequently to create a camouflage and avoid payment of provisional rent by denying the capacity of the landlord for any reason whatsoever. If there is any objection regarding the competency of the person letting out the property on behalf of the company is concerned, the said question is always open for determination during the trial and if ultimately the tenant succeeds, then obviously he can get the amount recovered by taking recourse to appropriate remedy. Judgment that has been relied upon by the learned Counsel for the petitioner is clearly distinguishable on facts and does not deal with the issue which has come up for consideration before this Court because in the present case, in another suit the petitioner(tenant) has clearly admitted regarding execution of a rent note between the parties and consequently, admitted the initiation of tenancy between them.”

Even before me the conduct of the respondents speak volumes

where they have refused to issue necessary instructions to the counsel who is appearing for them in the trial Court. It is clear that they are trying to avoid their liability by all means, fair and foul.

In the circumstances, the petition is allowed. The impugned order is set aside and the Rent Controller is directed to assess the provisional rent.

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

February 29, 2016

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**(AJAY TEWARI)
JUDGE**