

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

CR 955/2017(O&M)

Date of decision:23.08.2017

Naresh Kumar

.....Petitioner

v.

Rajeev Manchanda

.....Respondent

Coram: Hon'ble Mr.Justice Jaswant Singh

Present:- Mr.Rohit Verma,Advocate for the petitioner/tenant
Mr.Aditya Grover,Advocate for the respondent/landlord

Jaswant Singh,J,(Oral).

Petitioner/tenant is in revision directed against the order dated 12.1.2017 passed by the learned Rent Controller, Chandigarh whereby amendment of the written statement by filing a counter claim for seeking refund of payment of excess rent to the tune of Rs.48,000/- has been dismissed.

It is conceded that the respondent/landlord filed an eviction petition on 29.4.2015 seeking to evict tenant Naresh Kumar from the demised shop on the ground of personal necessity. It transpires that the tenant stopped payment of rent w.e.f. 1.5.2015. In the said eviction petition, replication was filed by the landlord claiming direction for payment of arrears of rent w.e.f. 1.5.2015, although, there was no issue regarding non-payment of rent. However, on the assessment of

provisional rent by the Rent Controller, admittedly the tenant deposited the due rent @ Rs.12,000/- per month payable till 30.4.2016. Since the tenant had also deposited 4 months' rent payable w.e.f. 1.5.2015 at the aforesaid rate directly in the account of the landlord, an application for amendment of the written statement to include the counter claim of refund of excess payment of rent for four months w.e.f. 1.5.2015 was filed. The same has been declined vide the impugned order dated 12.1.2017.

Upon notice, landlord has entered appearance through his counsel.

Learned counsel for the landlord has submitted that his client had filed a subsequent eviction petition on the ground of non-payment of rent w.e.f. 1.9.2016 by adjusting the aforesaid excess amount of rent paid for four months w.e.f. 1.5.2015 as otherwise the rent had only been paid till 30.4.2016. He had prayed for time to file required affidavit of the landlord so as to show that the present petition has become infructuous in the light of counter claim having been offset by the landlord himself by not insisting on rent due w.e.f. 1.5.2016 till 31.8.2016.

By way of CM 17573-CII/2017 an affidavit of Rajeev Manchanda, respondent has been filed. Said CM is allowed and affidavit is taken on record.

Para 7 of the aforesaid affidavit reads as under:-

“7. That even otherwise, the cause of action so as to

set a counter claim by the petitioner-tenant does not survives as the respondent-landlord has filed a subsequent rent petition on 18.3.2017 before the Ld.Rent Controller, Chandigarh, inter alia seeking arrears of rent from the petitioner-tenant and the ibid amount of Rs.48,000/- in lieu of 4 month's rent directly deposited by the petitioner-tenant in the account of the respondent-landlord has been adjusted/set off therein by the respondent-landlord himself. More particularly, in the subsequent Rent petition, the respondent-landlord is seeking arrears of rent w.e.f. September,2016 onwards, as the rent w.e.f. 1.5.2015 to 30.4.2016 has been deposited by the petitioner-tenant as per the rent assessment order dated 22.4.2016 in the earlier ongoing rent petition dated 29.4.2015 and the amount of Rs.48,000/- has been adjusted towards the rent for the month of May, June, July and August,2016 by the respondent-landlord himself in the subsequent rent petition. Thus, the petitioner-tenant is in arrears of rent w.e.f. September 2016 till date, as rightly claimed by the respondent-landlord in the subsequent pending rent petition. Hence the counter claim sought to be raised by the petitioner tenant is patently meaningless.

In the light of the facts and submissions made above, the petition preferred by the petitioner-tenant deserves to be dismissed.”

In view of the above, counsel for the parties are agreed that the present revision petition has become infructuous.

Dismissed as infructuous.

23.08.2017
joshi

(Jaswant Singh)
Judge

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No