

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

**CR No.8078 of 2018 (O&M)
Date of Decision-21.05.2019**

Ramesh Kumar ... Petitioner
Versus

Ishwar Singh Lamba ... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Vikas Bishnoi, Advocate
for the petitioner.

Mr. Vikas Chaudhary, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioner has challenged the order dated 31.10.2018 passed by Additional Civil Judge (Senior Division), Hisar vide which the application moved by the plaintiff for striking off defence of the defendant on account of non-payment of arrears of rent and monthly rent was allowed.

[2]. Respondent is owner/landlord of the premises in question which was acquired by him in the year 1971 through sale certificate dated 12.11.1982 issued by the Tehsildar, Hisar. The shop is on the ground floor which was rented out to the petitioner on 16.01.2013. Due to non-payment of arrears of rent and monthly rent, the respondent filed a suit for possession as well as recovery of Rs.1,82,000/- as arrears of rent and mesne profit @ Rs.60,000/- per month of the property

which was let out to the defendant/petitioner on rent @ Rs.30,000/- per month as per revised rent.

[3]. In the written statement, defendant/petitioner took an objection that property was rented out to him on a monthly rent of Rs.4000/- and present rate of rent is Rs.8000/- per month. The plea of the respondent that the property was let out to the petitioner @ Rs.22,000/- per month and thereafter, the same was revised to Rs.30,000/- per month was denied.

[4]. Order 15 Rule 5(1) CPC is in two parts. First part obligates the lessee to make payment of the entire admitted amount due with interest on the first date of hearing. Second part provides a situation where the lessee does not admit any amount to be due towards him, but still an obligation is fastened upon him to pay such monthly amount which is due within a week from the date of its accrual. In both the aforesaid situations, the failure on the part of the lessee would entail in striking off defence of the lessee.

[5]. Trial Court while allowing the application has relied upon the case law i.e. **Mrs. Ablinder Chawla Vs R.K. Gupta, 1994(2) (Rent) 145** and held that in both the eventualities, as narrated above, the tenant has to pay dues within a week from the date of its accrual, failing which the Court has no power except to strike off the defence of the defendant/petitioner. Defendant has admitted rent to the extent of Rs.10,000/- per

month. Plaintiff/respondent has claimed the same to be Rs.30,000/- per month. In terms of Order 15 Rule 5(1) CPC, it was mandatory on the part of the defendant/petitioner to deposit the rent throughout, but he has defaulted in making payment of the same.

[6]. In support of his contention, learned counsel for the petitioner relied upon alleged rent agreement Annexure P1 attached with the revision petition wherein signature of the respondent does not match with the signature appearing on the original rent note.

[7]. While issuing notice of motion on 29.11.2018, following order was passed:-

“Learned counsel for the petitioner contends that Order 15 Rule 5(1) CPC is divided into two parts. First part casts an obligation upon the lessee to make payment of the entire admitted amount due with interest on the first date of hearing. Second part provides a situation where the lessee does not admit any amount to be due towards him, but still an obligation is fastened upon him to pay such monthly amount which is due within a week from the date of its accrual. In both the eventualities, the failure on the part of the lessee would entail in striking off defence of the lessee/defendant. Learned counsel further contends that even @ Rs.10,000/- per month, the excess amount had already been paid to the plaintiff even before first date of hearing.

Notice of motion for 04.02.2019.

Let the calculations be furnished by the petitioner by the next date of hearing to show that excess payment was made by him to the plaintiff prior to first date of hearing.

In the meanwhile, trial Court is directed to adjourn the proceedings beyond the date fixed by this Court. “

[8]. Thereafter, respondent filed CM No.403-CII of 2019 for placing on record Annexures R1 to R 5 i.e. rent note for the period 02.01.2013 to 01.01.2016, rent agreement for the period 01.01.2016 to 31.12.2018, lease deed for the period 01.09.2018 to 01.07.2019 and lease deed dated 05.07.2013 along with copy of visa. In the aforesaid documents, original signatures of respondent i.e. Ishwar Singh Lamba are appearing in a broad way which is identical by the naked eye. Notice of this application was issued to the petitioner for the date fixed. On the date fixed i.e. 04.02.2019, the turn of the case did not reach and the same was adjourned to 25.02.2019 and thereafter to 09.04.2019. On 09.04.2019, there was no compliance of the order dated 29.11.2018 as the petitioner did not furnish the calculation to show the excess payment made by him to the plaintiff prior to the first date of hearing. Last opportunity was granted to the petitioner to do the needful, failing which interim stay was to be vacated. The case was adjourned to 11.04.2019. On the adjourned date, the turn did not reach and the case was further adjourned to 24.04.2019. On 24.04.2019, there was no representation on behalf of the parties because of some resolution passed by the Bar and in the interest of justice, the case was adjourned to 01.05.2019.

The compliance of order dated 29.11.2018 was still not made, but this Court in order to explore any amicable resolution, summoned the parties for 06.05.2019. The interaction between the parties did not yield any positive result.

[9]. Primary consideration was in respect of enhanced rent i.e. whether it was Rs.30,000/- per month in view of Annexure R-2 produced on record by the respondent or it was Rs.10,000/- in view of document Annexure P2 attached by the petitioner. Both the aforesaid documents carry different signatures of respondent Ishwar Singh Lamba. Difference in the signature can be *prima facie* seen from the naked eye. Comparison of signatures appearing on both the documents with the admitted rent note Annexure P1 attached by the petitioner himself *prima facie* shows that the same have not been affixed by the same person.

[10]. At this stage, no firm finding of fact can be recorded on the alleged plea of forgery in Annexure P2 submitted by the petitioner, but as per requirement of law, no indulgence can be granted in favour of the petitioner even on facts appearing on record, wherein the petitioner was under legal obligation to pay the arrears strictly in terms of Order 15 Rule 1(3) CPC. This revision petition is found to be totally devoid of merits and is accordingly dismissed.

[11]. Nothing observed hereinabove would be construed

to be an opinion on merits of the case.

21.05.2019
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No