

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR-7156-2019

Date of decision: 13.11.2019

Vir Kaul

..... Petitioner

Versus

Mahender Kaur and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. SD Bansal and Mr. Pardeep Sharma, Advocates
for the petitioner.

Mr. Vikas Jain, Advocate
for respondent No. 1-caveator.

RAMENDRA JAIN, (ORAL)

Through this revision, petitioner-tenant laid challenge to order dated 04.11.2019 (Annexure P-1) of learned Rent Controller/Executing Court, dismissing his objection and order dated 18.10.2019 (Annexure P-2), dismissing application seeking time to file reply to execution petition.

Briefly, contesting respondent No. 1-Mahender Kaur, filed a petition under Section 13 of East Punjab Urban Rent Restriction Act, 1949, as applicable to UT Chandigarh, for eviction of petitioner and proforma respondents No. 2 to 4, from demised Shop-cum-Office (SCO) No. 16-17, Sector 8-C, Chandigarh. During its pendency, the parties arrived at a compromise vide compromise deed dated 27.03.2017 (Annexure P-3). For ready reference, relevant para Nos. 1 to 4 of Annexure P-3 are reproduced hereunder:

service tax to the tune of Rs.1,55,32,705/- but not a position to pay forthwith. The calculation sheet is attached herewith and is a part and parcel to the present compromise.

2. *That the second party undertakes to clear all the arrears of rent including service tax to the tune of Rs.1,55,32,705/- (calculated up to March 2017) and pay the same to the first party in quarterly installments of rent equivalent to three months by way of post dated cheques by the 7th of each quarter month starting from 30.06.2017.*

The details of quarterly post dated cheques is as under:

<i>Sr. No.</i>	<i>Cheque No.</i>	<i>Dated</i>	<i>Bank</i>	<i>Period</i>	<i>Amount</i>
<i>1.</i>	<i>054261</i>	<i>30-06-17</i>	<i>Union Bank</i>	<i>January to March 2016</i>	<i>2768769/-</i>
<i>2.</i>	<i>054262</i>	<i>30-09-17</i>	<i>Union Bank</i>	<i>April to June 2016</i>	<i>2773185/-</i>
<i>3.</i>	<i>054263</i>	<i>31-12-17</i>	<i>Union Bank</i>	<i>July to September 2016</i>	<i>2782017/-</i>
<i>4.</i>	<i>054268</i>	<i>31-03-18</i>	<i>Union Bank</i>	<i>October to December 2016</i>	<i>2879387/-</i>
<i>5.</i>	<i>054293</i>	<i>30-06-18</i>	<i>Union Bank</i>	<i>January to February 2017</i>	<i>1984504/-</i>

3. *That the second party shall also continue to pay the rent including the service tax and other taxes as applicable to the first party every month by the 7th of each calendar month as per registered lease deed dated 24.2.2009 already executed between the parties starting from*

1.4.2017 are also being tendered along with this compromise, vide cheque numbers 476702 and 476701 respectively.

4. *That the second party shall not make and default in payment of arrears of rent or the monthly rent. In case the second party makes even a singly default in the payment of arrears of rent or the monthly rent, then the second party shall be liable for eviction and the first party shall be entitled to take the possession of SCO No. 16-17, Sector-8 C, Chandigarh from the second party by executing the orders of eviction as per law and the second party shall also be liable for contempt proceedings.”*

However, the petitioner and proforma respondents No. 2 to 4 did not adhere to the financial discipline as agreed by them vide aforesaid compromise deed.

Resultantly, respondent No. 1-landlady filed COCP-2669-2017, before this Court, pursuant to clause 4 of compromise deed Annexure P-3. During the pendency of said contempt petition, matter was referred to Mediation and Conciliation Center of this Court, wherein again second compromise dated 26.03.2018 (Annexure P-6) took place in between the parties. Pursuant thereto, co-ordinate Bench of this Court decided the aforesaid contempt petition vide order dated 28.11.2019 (Annexure P-8), which is reproduced hereunder:

“Learned counsel for the petitioner contends that an amount of Rs.1.18 Crores of the arrears are still left to be paid.

The same has not been paid and the respondent has violated his own settlement and undertaking.

Mr. Vir Kaul, Managing Director, M/s Headmaster Salon Private Limited has got his statement recorded before this Court. As per the said statement, he shall pay Rs. 15 Lacs every month till March, 2019 and thereafter, he will pay the arrears in lump-sum and shall continue to pay the monthly rent as per the earlier settlement thereafter till the date of the lease.

In view of the said statement, this Court has no doubt that the respondent shall now adhere to the statement made before this Court. However, in case the said statement made before this Court is violated in any manner, the petitioner will be at liberty to move for eviction from the premises forthwith and in the alternative also moved this Court by way of reviving the present contempt petition.

The respondent is bound by the statement made before this Court. The rent shall be deposited on or before the last date of every month.

The contempt petition is accordingly disposed of in view of the above said position.”

Since, the petitioner and proforma respondents No. 2 to 4 did not adhere to the terms and condition of second compromise Annexure P-6 also, respondent No. 1-landlady, finding no option, filed execution petition before the learned Rent Controller, wherein after due notice, petitioner filed an application to grant him reasonable time to file revision before this Court against the order dated 18.10.2019 (Annexure P-2), whereby his prayer to

file reply to the execution petition was rejected.

The Executing Court, after hearing both the sides rejecting the prayer of petitioner-tenant ordered for issuance of warrants of possession for 30.11.2019, with permission to break open the locks vide order Annexure P-1, impugned herein.

Learned counsel for the petitioner-tenant *inter alia* contends that learned Executing Court, ought not to have entertained the execution in view of second compromise Annexure P-6, as respondent No. 1-landlady filed CM-3241-CII-2019 in COCP-2669-2017, which is pending adjudication for 10.02.2020. Petitioner is ready to pay the entire arrears of rent by 31.03.2020. Since, there was no executable decree in favour of respondent No. 1-landlady, therefore, the Executing Court, could not have ordered for eviction of petitioner by breaking open the locks of demised premises. Vide order Annexure P-8, co-ordinate Bench of this Court has provided two different remedies to respondent No. 1-landlady i.e. either to approach this Court by way of reviving the contempt petition or move for eviction of petitioner and proforma respondents No. 2 to 4 from the demised premises. Since, respondent No. 1 had exhausted her remedy by filing second contempt petition before this Court, therefore, she could not have availed second remedy for eviction of the petitioner.

On the other hand, learned counsel for respondent No. 1-caveator, vehemently refuting the submissions of learned counsel for petitioner-tenant contends that despite two compromises Annexures P-3 and P-6, done by the petitioner with respondent No. 1-landlady, he has not paid the arrears of rent strictly, in accordance with the terms and conditions settled in between them. As on date, ₹2,20,00,745/- as arrears of rent has to

be recovered from the petitioner which at the time of first compromise Annexure P-3, was only ₹1,55,32,705/-. The petitioner-tenant even tried to commit fraud with the Executing Court by stating that he does not understand English language. Therefore, he does not know what statement of his was recorded by a co-ordinate Bench of this Court qua alleged compromise reflected in the order dated 28.11.2018 (Annexure P-8). The petitioner has no respect for law. He is in the habit of flouting Court orders repeatedly. Even various cheques issued by him have also bounced, which he allegedly issued towards arrears of rent.

Having given thoughtful consideration to the rival submissions, this Court finds that the instant revision is completely a dishonest and *mala fide* attempt to retain possession of the demised premises illegally, taking false and frivolous pleas. Compromise deed Annexure P-3 is not in dispute, wherein as per clause 4, it was specifically agreed by the petitioner that even on a single default of payment of arrears of rent or monthly rent, respondent No. 1-landlady would be entitled to evict him and taken possession of the demised premises.

In view of the above specific clause, there is no wrong in fling of execution by respondent No. 1-landlady and ordering of eviction of petitioner by the learned Rent Controller/Executing Court, vide impugned order Annexure P-1, by breaking open the locks, inasmuch as, pendency of second contempt petition filed by respondent No. 1, does not debar her to file execution in terms of compromise deed before the Rent Controller. Even otherwise, as per compromise deed Annexure P-3, respondent No. 1-landlady has been given two liberties, either to file contempt petition or seek eviction of the petitioner and proforma respondents through Rent

Controller. Both the above conditions are not overlapping, rather independent to each other. From this angle also, pendency of second contempt petition by respondent No. 1-landlady has no relevance for the Executing Court in ordering eviction of the petitioner.

It is pertinent to mention here that learned counsel for the petitioner has not been able to refute submissions of learned counsel for respondent No. 1-caveator that some of the cheques issued by the petitioner towards payment of arrears of rent have bounced. According to learned counsel for respondent No. 1-landlady, as on date ₹2,20,00,745/- is due towards arrears of rent from the petitioner which on the date of entering into compromise deed Annexure P-3 were ₹1,55,32,705/-. Both the above figures show that despite undertaking of the petitioner, in compromise deed Annexure P-3 and before a co-ordinate Bench of this Court, whereupon order Annexure P-8 was passed, the petitioner did not pay arrears of rent and for that reason, the same has increased from ₹1,55,32,705/- to ₹2,20,00,745/-. From the above fact, it is evident that petitioner is not a good tenant.

The petitioner even tried to dictate his terms to Executing Court by stating that he does not know or understand English language. He even filed application for supplying copy of execution along with documents in Hindi language, to gain time which was rejected vide order dated 30.09.2019 (Annexure P-13), reproduced as under:

“Arguments heard on application filed by JD No. 2 for supply of copy of execution application and documents attached along with execution application in Hindi language, interalia on the ground that language of the subordinate court

as per Volume no. 1, Chapter 1 Part N of Punjab & Haryana High Courts Rules and Orders is Hindi in Union Territory and to enable JD no. 2 to file effective reply supply of execution application and documents in Hindi language is necessary.

Per contra, ld. Counsel for DH suffered a separate statement to the effect that instant application is filed just to delay the proceedings.

Respective contentions heard and considered.

Perusal of file shows that JD No. 2 Vir Kaul is Director of M/s Headmaster Salon Pvt. Ltd., which is a high profile salon and it cannot be expected that a person who is director of a salon like this does not know or understand English language. Secondly, JD no. 2 is also petitioner before Rent Controller and in that proceeding he never demanded copies of documents etc. in Hindi language. Although in statement before Rent Controller, he sign in Hindi language. But from that it cannot be said that he does not understand English language. Further, even if, it is presumed that JD No. 2 does not know English language, then it is the duty of the Advocate to make him understand the language and to help him to file appropriate reply. Ultimately, Advocate is also an officer of the court and supposed to help the court. Therefore, it is clear that this application is filed just to delay the proceeding. Accordingly, same is dismissed.

*Let file be put up on **03.10.2019** for filing objections, if any by the appearing JD.*

Another application is filed today by JD no. 3 and 4 to delete their name from the array of the JDs. Copy supplied.

Let its reply be also filed on the date fixed.”

The above overall conduct of petitioner shows that he is a mischievous person and out and out to retain possession of demised premises, illegally without payment of current rent or even exorbitant arrears of rent to the tune of ₹2,20,00,745/-. Petitioner cannot be permitted to take the benefit of defiance of his own undertakings/compromise and enjoy the demised premises at the cost of respondent-landlady.

In view of discussion made above, the instant revision is dismissed. Petitioner is directed to vacate the demised premises within two days from today.

November 13, 2019

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**(RAMENDRA JAIN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No