

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

101

CR-348-2020 (O&M)
Date of decision: 08.12.2022

Kanta Kumari	Versus	Petitioner
Bhag		Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Vishal Gupta, Advocate for the petitioner.

MANJARI NEHRU KAUL, J. (ORAL)

The petitioner/lessee is seeking setting aside of the order dated 18.09.2019 (Annexure P-7) passed by learned Civil Judge (Jr. Divn.), Chandigarh whereby an application moved by her for permission to deposit the lease amount before the Court concerned was dismissed.

Learned counsel appearing for the petitioner submits that while passing the impugned order, the Court concerned, overlooked the statutory provisions of Order 15 Rule 5 of the Code of Civil Procedure, 1908 (for short, 'the Code') which enunciates that in the event of default by the tenant/lessee in making monthly payment of rent during the pendency of the suit, his/her defence would be struck off. Learned counsel contends that the petitioner who is a lessee, had been regularly paying the rent to the respondent prior to the institution of the suit in question and even now to show her bonafides in compliance of Order 15 Rule 5 of the Code, she was ready and willing to continue depositing the monthly rent so as to avoid any adverse inference against her. Learned counsel still further submits that when the petitioner tried to pay the rent to the respondent, he intentionally for reasons but obvious refused to accept the same and it was in the aforesaid background and

circumstances, the petitioner sought permission from the Court below to deposit the rent before it else she would have to face adverse consequences, which would be prejudicial to her case.

I have heard learned counsel and perused the relevant material on record.

At the outset, it would be relevant to reproduce Order 15 Rule 5 of the Code, which reads as under:-

“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.

Explanation 1.- The expression "first hearing" means the date for filing written statement for hearing mentioned in the summons or where more than one of such dates are mentioned, the last of the dates mentioned.

Explanation 2.- The expression "entire amount admitted by him to be due" means the entire gross amount, whether as rent or compensation for use and occupation, calculated at the admitted rate of rent for the admitted period of arrears after making no other deduction except the taxes, if any, paid to a local authority in respect of the building on lessor's account and the amount, if any, paid to the lessor acknowledged by the lessor in writing signed by him and the amount, if any, deposited in any Court.

Explanation 3.- (1) The expression "monthly amount due" means the amount due every month, whether as rent or compensation for use and occupation at the admitted rate of rent, after making no other deduction except the taxes, if any, paid to a local authority, in respect of the building on lessor's account.

(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.”

A bare perusal of the above provisions makes it abundantly clear that the Trial Court may strike off defence of the lessee in the event of default in paying the monthly amount of rent within a week from the date of its accrual.

In the present case, a perusal of the plaint reveals that the respondent/plaintiff is not seeking relief of recovery of rent or compensation for use and occupation. Still further, the respondent/plaintiff is disputing the rate of rent. Therefore, this Court fails to comprehend as to how the provisions of Order 15 Rule 5 of the Code would be attracted and still further how the defence of the petitioner would be struck off, moreso, when it is now a matter of record that he had offered to pay the rent to the respondent/plaintiff but the latter had himself refused to accept the same.

In the circumstances, this Court does not find any error in the impugned order. Accordingly, the instant revision petition being devoid of any merit is dismissed.

08.12.2022

Vinay

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No