

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

CR No.427 of 2022 (O&M)

Date of Decision: 04-07-2022.

M/s English Language Institute and another

.....Petitioners

Versus

Rajesh Kumar and others

.....Respondents

CR No.428 of 2022 (O&M)

M/s English Language Institute and another

.....Petitioners

Versus

Rajesh Kumar and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Mr. Mayank Mathur, Advocate
for the petitioners.

Mr. Amandeep Singh Jattana, Advocate
for the respondents.

MEENAKSHI I. MEHTA, J

Vide this common judgment, both the above-mentioned revision petitions are being decided together because these have arisen out of the single order dated 19.01.2022 (Annexure P-1 in both the petitions) passed by learned Civil Judge (Junior Division), Patiala (for short 'the trial Court') whereby the applications (Annexure P-7 in both the petitions) moved by the petitioners-plaintiffs (here-in-after to be referred as 'the

plaintiffs') for seeking the dismissal or in the alternative, the rejection of the counter claims filed by the respondents-defendants (here-in-after to be referred as 'the defendants') separately, have been dismissed.

2. Bereft of unnecessary details, the facts culminating in the filing of both the present revision petitions, are that the plaintiffs filed a civil suit against the defendants for seeking a decree for permanent injunction for restraining them (defendants) and their agents etc from interfering in their (plaintiffs') possession over the suit property, i.e the Ground Floor portion of SCF Nos.33 & 34, Leela Bhawan Market, Patiala and from forcibly dispossessing them from the same, while averring that they (plaintiffs) had taken the said property on lease for running their business. The defendants filed their written statement contesting the claim of the plaintiffs therein on various grounds. They filed their separate counter claims also for seeking the possession of the suit property on the ground that the plaintiffs were in the arrears of lease money since March, 2020. Then, the plaintiffs moved two applications (Annexure P-7 in both the petitions) for seeking the dismissal or in the alternative, the rejection of the said counter claims and these applications have been dismissed by the trial Court vide the impugned order Annexure P-1.

3. I have heard learned counsel for both the parties in these revision petitions and have also perused the files carefully.

4. Learned counsel for the plaintiffs (petitioners) has contended that the defendants had leased out the suit property to the plaintiffs for a period of six (06) years, vide two separate lease deeds dated 09.02.2018

(Annexure P-2 in both the petitions) and on being threatened by them (defendants) qua their dispossession from the same forcibly, the plaintiffs filed the said suit for seeking a decree for permanent injunction and the counter claims, as preferred by both the defendants therein, are not legally maintainable because the suit property falls within the urban area and hence, the provisions of the Punjab Rent Act, 1995 (for short 'the Act of 1995') are applicable to the same and it being so, the appropriate remedy that can be available with the defendants to seek the possession of the suit property, is to invoke the relevant provisions of the Act of 1995 for seeking their (plaintiffs') ejectment from the same and therefore, the afore-said counter claims are liable to be dismissed or in the alternative, to be rejected. To buttress his contentions, he has placed reliance upon the observations made by the Apex Court in **Laxmidas Bapudas Darbar vs. Smt. Rudravva, 2001(2) R.C.R. (Rent) 323.**

5. Per contra, learned counsel for the defendants has argued that the counter claims preferred by both the defendants, are perfectly maintainable because the suit property had been leased out to the plaintiffs and in the eventuality of the breach of the terms and conditions, as laid down in the said lease deeds, by them (plaintiffs) by way of non-payment of the lease money since March, 2020, the defendants are not required to file any eviction petition against them under the provisions of the Act of 1995 for seeking the possession of the suit property. He has placed reliance upon **Popat and Kotecha Property vs. State Bank of India Staff Association, (2005) 7 SCC 510,** in support of his arguments.

6. It would be relevant and necessary to point it out here that though the above-said lease deeds are stated to have been executed for leasing out the suit property to the plaintiffs but it is worth-while to mention here that in the opening part of these lease deeds, the words “Yearly Average Rent” have been mentioned instead of words “yearly lease money” and moreover, the suit property has been agreed therein to be referred to as the “tenancy premises” and throughout in these lease deeds, the said term has been used while referring to the said property wherever so intended or required. It is well settled that to construe the true intent of the parties executing a document, the nomenclature thereof would not be the decisive factor and rather, the contents of the document are to be taken as the key factor to ascertain its actual/real nature. In common parlance, words ‘tenancy’ and ‘lease’ are generally used interchangeably and use of the afore-mentioned words, i.e ‘yearly average rent’ and ‘tenancy premises’ in the said lease-deeds, leads to an irresistible inference to the effect that in fact, the suit property had been let out to the plaintiffs as tenants and therefore, the said lease deeds, in pith and substance, are the rent notes/deeds. It being so, the provisions of the Act of 1995 would be applicable to the said property.

7. Seen from yet another angle also, even if the above-said lease deeds are presumed to have been executed for actually leasing out the suit property to the plaintiffs as claimed by the defendants, even then the fact remains that in para No.5 of their respective counter-claims, both the defendants have specifically asserted that the plaintiffs had not been paying

the lease money since March, 2020. Para No.3 of the terms and conditions as settled in both the afore-said lease deeds reads as under: -

“3. The Lease money shall always be payable in advance, on or before 28th day of every month, before starting of new month rent. To clarify, Lease money for the month of February 2018 shall be paid on or before January 28, 2018 and this system shall be followed through out the lease period. In case the Lessee fails to pay the lease money by the due date, he shall be liable to payment penalty of Rs.500/- (Rupee Five Hundred only) per day till he pays the lease money. In case the Lease money is not paid for 60 days, the Lessee’s right to use the tenancy premises ceases. The Lessor has the right to initiate legal proceedings against the Lessee.”

Thus, it is explicit that there is a forfeiture clause in the said lease deeds in the eventuality of the failure on the part of the plaintiffs to pay the lease money. Undisputedly, the suit property falls within the urban/Municipal area. It is pertinent to mention here that Section 20(2)(a) of the Act of 1995 provides for the ejectment of a tenant on the ground of non-payment of arrears of rent.

8. Although the afore-said period of lease has not yet expired but in **Laxmidas Bapudas Darbar (supra)**, Hon’ble Supreme Court has made the following observations: -

“18. xxxx

(i) xxxx

(ii) xxxx

(iii) Proceedings for eviction of a tenant under a fixed term contractual lease can be initiated during subsistence or currency of the lease only on a ground as may be enumerated in Clauses (a) to (p) of Sub-section (1) of Section 21 of the Act and it is also provided as one of the grounds for forfeiture of the lease rights in the lease deed, not otherwise.”

While making these observations, the Apex Court has referred to the provisions of Section 21 of the Karnataka Rent Control Act which are analogous to those as contained in Section 20 of the Act of 1995. Moreover, in a recent judgment rendered in **Subhash Chander & Ors. vs. M/s Bharat Petroleum Corporation Ltd. (BPCL) & Anr., 2022 (1) R.C.R. (Rent) 117**, the Apex Court has categorically held that “no error was committed by the High Court in arriving to a conclusion that even after the expiry of the lease term of the lease deed, the respondents became a statutory tenant and jurisdiction of the Civil Court is impliedly barred and could be evicted only under the provisions of Haryana (Control of Rent and Eviction) Act 1973”. The above-quoted observations clinch the entire controversy between the parties and in the light of the same, it is held that the said counter claims filed by the defendants for seeking the possession of the suit property are not maintainable in the said civil suit filed by the plaintiffs and rather, the provisions of the Act of 1995 would be applicable for the said purpose.

9. The observations, as made by the Apex Court in **Popat and Kotecha Property (supra)**, are of no help to the defendants because in the

afore-said case, both the parties had put-forth diverse claims for which evidence was required to be adduced whereas in the present matter, the issue pertains to the maintainability of the counter claims in view of the provisions contained in the Act of 1995.

10. As a sequel to the fore-going discussion, it follows that the impugned order deserves to be set-aside. Resultantly, both the revision-petitions in hand are hereby allowed and the impugned order Annexure P-1 dated 19.01.2022 is hereby set-aside and the counter-claims filed by both the defendants separately in the said civil suit stand dismissed on the ground of their being not maintainable before the Civil Court.

04th July, 2022.
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(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *Yes*