

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

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CR-2717-2022 (O&M)
Date of decision: 18.07.2022

Navneet Kaur Sethi

.....Petitioner

Versus

Payal Jaggi and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Shashi Kumar Yadav, Advocate for the petitioner.

MANJARI NEHRU KAUL, J. (ORAL)

The petitioner by way of instant revision petition is impugning the order dated 02.05.2022 (Annexure P-6) passed by learned Civil Judge (Jr. Divn.), Gurugram vide which the application filed by the respondent/plaintiffs under Order 15 Rule 5 of the CPC for striking off their defence on account of non-payment of rent was allowed.

Learned counsel for the petitioner submits that the impugned order deserves to be set aside being contrary to the settled law. He submits that the trial Court erred in ignoring the fact that the petitioner had already paid Rs.15 lakhs as security at the time of commencement of the tenancy, to the respondents/plaintiffs on the condition that the aforementioned amount would either be adjusted towards rent in future or would be returned back at the time of termination of the tenancy. Learned counsel submits that in view of the aforementioned conditions, there was no occasion for the petitioner to pay any rent to the respondents/plaintiffs as Rs.15 lakhs already stood paid to the respondents/plaintiffs. He further submits that the petitioner

had been regularly paying the rent to the respondents which she would prove during trial by way of evidence. Learned counsel still further contends that the lease agreement dated 15.03.2019 being an unregistered document was inadmissible in evidence and thus liable to be impounded under the Stamps Act. A prayer was, therefore, made to grant an opportunity to the petitioner to lead evidence for just and proper decision of the case.

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

A suit for possession by way of ejectment and for recovery of arrears of rent was filed by the respondents/plaintiffs. It would be apposite to reproduce Order 15 Rule 5 of the CPC which reads thus:-

"Order XV Rule 5 CPC 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 under Section 30 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972.

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 reading of the aforementioned provisions leaves no manner of doubt that when a tenant, irrespective of whether or not he admits to any amount being due against him, shall during the pendency of the suit for eviction continue to deposit the monthly amount of rent regularly, within a week from the date of its accrual.

In the event of any default by the tenant in making the regular payment of rent, the trial Court has been empowered to strike off the defence of such tenant, subject to the provisions of Sub Rule (2).

The purpose and object behind Order 15 Rule 5 of the CPC is to ensure that after the determination of the lease, while the tenant is occupying the suit property during the pendency of the eviction proceedings, the landlord must not be deprived of the rent qua the said

period as it would cause undue loss to him.

The Courts should refrain from exercising its discretion vested under Order 15 Rule 5 of the CPC in a mechanical manner since it is a penal provision, however, at the same time if no sufficient cause for default in the payment of the rent has been brought-forth by the tenant, the Courts would be justified in striking off the defence.

In the case in hand, rate of rent as per the agreement between the parties is Rs.2 lakhs per month. No doubt the petitioner has laid a great deal of stress on the lease deed being inadmissible, however, she has not specifically denied the rate of rent agreed upon between her and the respondents/plaintiffs in the written statement filed before the trial Court. Still further, though it has been urged that the petitioner has been paying rent to the respondents/plaintiffs regularly, however, there is nothing on record to prima facie substantiate the submissions made by learned counsel.

Even assuming that Rs.15 lakhs had been paid by the petitioner to the respondents as security and it should have been adjusted towards payment of rent, still the outstanding dues towards rent, from the inception of the suit in question would be much beyond Rs.15 lakhs as admittedly the rate of rent is Rs.2 lakhs per month. In the circumstances, the submissions made by learned counsel that the petitioner had been regularly paying the monthly rent to the respondents deserves to be rejected.

As a sequel to the above, this Court is unable to concur with the submissions made by learned counsel that the trial Court had committed illegality while striking off the petitioner's defence. The

petitioner cannot be allowed to enjoy the suit property to the detriment of the respondents.

Dismissed.

18.07.2022

(MANJARI NEHRU KAUL)
JUDGE

Vinay

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