

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

Sr. No.109

CR No.4651 of 2022

Date of Decision: 09.12.2022

Captain Ajay Sharma

.... Petitioner

Versus

Sidharth

... Respondent

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Gaurav Datta, Advocate
for the petitioner.

TRIBHUVAN DAHIYA, J. (ORAL)

Learned counsel for the petitioner contends that while passing the impugned order dated 02.07.2022 (Annexure P-5), the trial Court has wrongly allowed the respondent/defendant's application dated 31.08.2021 (Annexure P-3) seeking leave to defend by holding as under:

7. On the analogy of law elaborated above, the present suit fails to fall within the premises contemplated under Order XXXVII of CPC. Had it been a suit based on rent agreement in which the liability, would have been accrued, the suit would have been within the spheres of Order XXXVII of the CPC. A Rent Controller order or a court order are nowhere contemplated to fall within Order XXXVII of CPC. The pleadings of the plaintiff merit to be a recovery suit simpliciter rather than a summary suit under Order XXXVII of CPC.

2. It is apparent on record that the suit was filed on the basis of rent agreement dated 04.10.2017 (Annexure P-1) only. Still, the trial Court held 'had it been the suit based on rent agreement, in which the liability

would have been accrued, the suit would have been within the spheres of

Order XXXVII of the CPC.' It is, therefore, clear that the rent agreement on the basis of which the suit has been filed, was not brought to the notice of the trial Court resulting in passing of the impugned order granting leave to defend.

3. In view thereof, it is deemed appropriate to set aside the impugned order dated 02.07.2022 and remand the matter to the trial Court for fresh adjudication on merits by taking all the relevant facts into account.

4. Ordered accordingly.

5. Petition stands disposed of.

6. Pending miscellaneous application(s), if any, stand disposed of as having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

09.12.2022
Maninder

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