

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

206

CR No.7148 of 2017 (O&M)
DATE OF DECISION : 4th JANUARY, 2023

Sandeep Bansal and another

.... Petitioners

Versus

Dipesh Sekhri and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Mukesh Mittal, Advocate and
Mr. Anubhav Bansal, Advocate
for the petitioners.

Respondent No.1 proceeded ex-parte
vide order dated 23.12.2022.

Mr. Aayush Goyal, Advocate for
Mr. Piyush Khanna, Advocate
for respondent Nos.2 and 3.

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RAJBIR SEHRAWAT, J. (Oral)

This is a revision petition filed under Article 227 of the Constitution of India read with Section 151 CPC praying for setting aside the impugned order dated 05.07.2017 (Annexure P-7) passed on 05.07.2017 but erroneously date mentioned as 05.05.2017, with a further prayer to dismiss the application for leave to defend filed by respondent No.1.

It is submitted by the counsel for the petitioners that the premises upon which the respondent No.1 was a tenant under a written lease agreement already stands handed over to the petitioners pursuant to an eviction order passed by the Rent Controller. In the proceedings before the Rent Controller, the fair rent was determined by the Rent Controller @ Rs.15,000/- per month. Although the petitioners were claiming the amount as per the written lease agreement, however, even the fair rent determined by the Rent Controller was not paid by the respondents. Therefore, the petitioners had filed a suit for recovery through summary procedure as envisaged under order XXXVII CPC. In the said proceedings, the respondents could not have been permitted to defend the suit except with condition of deposit of fair rent determined by the Rent Controller. The counsel has further submitted that even the respondent No.1 had admitted the rate of rent to be Rs.15,000/- per month in the application moved by him for seeking leave to defend. Therefore, the trial Court could not have granted leave to defend; unless the said amount is deposited by the respondents; as mandated by the provisions contained in Sub Rule 5 of Rule 3 of Order XXXVII CPC. Therefore, the order passed by the trial Court deserves to be modified by inserting a condition that leave to defend is subject to deposit by the respondent No.1 the entire amount at the rate of Rs.15,000/- per month for the entire default duration of tenancy. The counsel for the petitioners has relied upon the judgment rendered by Hon'ble the Supreme Court in the case of *Southern Sales & Services and others Versus Sauermilch Design & Handels GMBH, 2008 (4) R.C.R. (Civil) 729.*

There is no representation on behalf of contesting respondent No.1. Rather, he has chosen to be proceeded against ex-parte. The counsel appearing for respondent Nos.2 and 3 submits that he has no objection, if the present petition is allowed.

Having heard the counsel for the parties, this Court finds substance in the arguments raised by the counsel for the petitioners. However, before proceeding further, it is appropriate to have a reference to the provisions contained in proviso to Sub Rule 5 of Rule 3 of Order XXXVII CPC, which is reproduced herein below:

“3. Procedure for the appearance of defendant –

XXXXX XXXXX XXXXX XXXXX

(5) The defendant may, at any time within ten days from the service of such summons for judgment, by affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend, apply on such summons for leave to defend such suit, and leave to defend may be granted to him unconditionally or upon such terms as may appear to the Court or Judge to be just:

Provided that leave to defend shall not be refused unless the Court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up by the defendant is frivolous vexatious:

Provided further that, where a part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit shall not be granted unless the amount so admitted to be due is deposited by the defendant in Court.”

XXXXX XXXXX XXXXX XXXXX

In application for leave to defend moved by the respondent No.1, he has admitted the rent at the rate of Rs.15,000/- per month. Not only that, the said amount was determined as the fair rent as well; by the Rent Controller; and the Rent Controller had ordered the respondent No.1 to deposit the amount with interest @ 6% per annum. A bare perusal of aforesaid second proviso to Sub Rule 5 Rule 3 of Order XXXVII CPC shows that it is framed in negative term; prohibiting the trial Court to grant any leave to defend without condition of depositing the amount in case the amount or part of it is admitted by the defendant/respondent. Therefore, it is obvious that the trial Court could not have granted unconditional leave to defend to the respondents. The trial Court was under duty to put a condition qua deposit of the amount which was already finalized through the order of the Rent Controller by way of determination of fair rent, which was not even disputed by the respondent No.1 in his application moved by him before the trial Court for leave to defend. The counsel for the petitioners has rightly relied upon the judgment rendered by Hon'ble the Supreme Court in the case of ***Southern Sales & Services and others (supra)***.

Accordingly, the order dated 05.07.2017 passed by the trial Court granting leave to defend to the defendant No.1 is modified by inserting a condition that he shall be granted leave to defend only on deposit of the entire amount of fair rent as was determined and ordered by the Rent Controller in the original proceedings. The trial Court is directed to grant time of 15 days from the date of receipt of certified copy of this order, to respondent No.1; to deposit the entire above said amount, failing which the trial Court is directed to proceed with the matter as if

the respondent/defendant No.1 in the suit had not been granted any leave to defend.

Allowed in the aforesaid terms.

The pending miscellaneous application, if any, is also disposed of as such.

04th JANUARY, 2023
‘sandeep’

(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>Yes</i>