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116 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-2509-2023

Date of Decision: 26.04.2023

Zile Singh

..... Petitioner

Versus

Mrs. Anguri Devi

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Amit Jain, Senior Advocate, with
Mr. Ramandeep, Advocate,
for the petitioner.

RAJBIR SEHRAWAT, J. (ORAL)

This is a petition filed under Article 227 of the Constitution of India praying for setting aside the order dated 27.03.2023 passed by the Additional District Judge-cum-Presiding Judge, Exclusive Commercial Court, Gurugram.

It is submitted by the learned counsel for the petitioner that the Trial Court has, although recorded that there are triable issues involved in the suit; however, still the leave to defend the suit for recovery has been permitted only subject to the condition, and even the condition is unreasonable. Counsel has submitted that it is not even in dispute that no invoices were raised by the landlord during the Covid-19 pandemic period, therefore, there had not been any requirement of paying any GST. However, the calculations submitted by the landlord includes a huge amount of GST and the amount of T.D.S; and the condition has been imposed to deposit part of this calculated amount. Otherwise, it is the assertion of the

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petitioner/defendant that the rent was reduced to Rs.1,00,000/- per month during the period of Covid-19 pandemic. Even after the period of Covid-19 pandemic, the petitioner has been paying and the landlord has been accepting the rent at the rate of Rs.1,50,000/- per month. Hence, the condition imposed by the Trial Court to the leave to defend the suit; deserves to be scrapped. In any case, the said condition has to be made reasonable; keeping in view the rival stands of the parties.

In view of the nature of the order being passed in this case, this Court does not see any requirement of issuing notice to the respondent; at this stage.

Having heard learned Senior counsel for the petitioner, this Court finds that it is recorded even by the Trial Court that there are triable issues involved in the case. Therefore, it cannot be said that the petitioner does not have the facts on the basis of which he can defend the suit. Hence, the Trial Court has rightly granted the leave to defend. However, the condition attached to the leave to defend appears to be not so justified. The direction is to deposit one-third of the amount and to furnish third party security of the remaining two-third amount. However, the calculation submitted by the landlord/plaintiff, on the basis of which this direction is issued by the Trial Court is based upon unilateral calculations, in which even the GST and the amount of T.D.S have been included. But the issue of payment of taxes would come up only after the amount is determined by the Court after assessing the rival contentions. Therefore, the blanket direction to deposit one-third of whatever is the calculation made by the plaintiff,

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deserves to be modified.

It is asserted even by the petitioner/defendant that he is paying rent at the rate of Rs.1,50,000/- per month. Therefore, it would be reasonable to bound down the petitioner to deposit the amount at the rate of Rs.1,50,000/- per month plus payable GST, T.D.S amount and the other payable taxes; for the period of alleged default; instead of one-third of the calculations made by the petitioner. Accordingly, the condition imposed by the Trial Court is modified and the petitioner is directed to deposit the amount calculated at the rate of Rs.1,50,000/- per month plus payable taxes and the amount of T.D.S; for the entire period of alleged default within a period of four weeks from today. Since the default in payment of rent for sometime is not even disputed by the petitioner, therefore, the Trial Court is directed to disburse to the plaintiff an amount calculated at the rate of Rs.1,00,000/- per month plus taxes and the amount of T.D.S; for the alleged period of default, out of the amount so deposited.

Needless to say that the order passed by this Court will not be taken as prejudicial to the interest of the plaintiff for the purpose of final disposal of the suit, which shall be decided in accordance with law.

The revision petition is disposed of in the above-said terms.

(RAJBIR SEHRAWAT)
JUDGE

26.04.2023
adhikari

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No