IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-4620-2019(O&M)
Date of decision:-14.2.2023

M/s Hyco Auto Accessories Pvt. Ltd.

...Petitioner

Versus

M/s NSJ Automotive Polyplastics and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Pavan Malik, Advocate
for the petitioner.

Mr.Gurinder Pal Singh, Advocate
for the respondents.

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H.S. MADAAN, J.

1. Feeling aggrieved by the order dated 25.3.2019 passed by the trial Court of Additional Civil Judge(Sr.Divn.), Rewari dismissing an application under Order 15 Rule 5 filed by the plaintiff seeking striking of the defence of defendant, the plaintiff has approached this Court by way of filing the present revision petition.

2. Briefly stated, facts of the case are that plaintiff M/s Hyco Auto Accessories Pvt. Ltd. having its office at Gurugram had brought a suit for possession and recovery of Rs.15 lakhs against defendants M/s NSJ Automotive Polyplastics and others, on the assertions that the plaintiff being owner of the company having plot No.76 situated at Sector 6, IMT Bawal having area of 2974 Sq.Mtrs., leased out an area measuring 15000 Sq.Ft., having basement and ground floor to defendants vide registered lease deed No.1856 dated 9.2.2017; the lease period was for

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five years i.e. up to 31.1.2022, however, it was agreed that the initial two years i.e. up to 31.1.2019 would be lock-in period and during this lock-in period, the defendants would not vacate the premises, though they would be liable to pay agreed rent to the plaintiff company during this period @ Rs.1,25,000/- per month along with service tax to the plaintiff on or before 7th day of every calender month; there was a clause for increase of rent @ 5% every year; the defendants had given a cheque in the sum of Rs.3,75,000/- as security to the plaintiff, i.e. equivalent to 3 months rent, which was refundable without any interest at the time of completion of lease period on 31.1.2022; however on presentation, the cheque was dishonoured for the reason that defendants had stopped the payment; the plaintiff company had then served a legal notice upon the defendants but no payment was made within stipulated period, as such a complaint under Section 138 of Negotiable Instruments Act was filed by the plaintiff company against the defendants.

On 20.2.2017, a fire had broken out in the demised premises and two labourers of defendants died in that incident; on complaint of one Jagdish, FIR No.71 dated 20.2.2017 under Section 304 IPC was registered at Police Station Kasola, District Rewari; the demised premises was also damaged to a great extent resulting in loss of about Rs.79,24,775/-.

According to the plaintiffs, they had asked the defendants on several occasions to pay Rs.3,75,000/- i.e. 3 months advance rent and to further pay the rent as per terms and conditions of the registered lease agreement or to vacate the premises but to no effect, giving rise to a cause of action to the plaintiff to bring the suit in question.

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According to the plaintiffs, they had got the tenanted premises/ building insured for a sum of Rs.1 crore in which a claim has been lodged with the insurance company and in case the insurance company does not pay the damages or pay less damages then the entire or the deficient amount would be recovered from the defendants and plaintiff company would initiate proceedings for recovery after approval/settlement of that claim.

3. On notice, the defendants appeared and filed a written statement contesting the suit raising various preliminary objections contending that the premises in question were leased out on 2.2.2017 and only after 18 days i.e. on 20.2.2017, a fire incident had taken place and since then the premises in question is already in possession of the plaintiff and plaintiff has not permitted the defendants to remove their material and machinery; the suit is not legally maintainable and plaintiff is not entitled to claim any relief; the plaintiff has violated terms of the lease agreement etc. On merits, the defendants admitted having taken the premises on lease from the plaintiff vide a registered lease deed contending that they had established a plant in the premises by raising a loan spending about Rs.20 lakhs on machinery; due to illegal activity of the plaintiff during work of shifting of electric transformer and heavy electric lines without permission of the electricity department, a fire broke out and spread to the portion under occupation of the defendants resulting in death of the labourers and huge loss to the machinery and material worth about Rs.60 lakhs belonging to the defendants; the plaintiff has lodged a false FIR against the defendants; the plaintiff has not allowed the defendants to enter the

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premises after 20.2.2017; the material and machinery of defendants are being illegally detained by the plaintiff; payment of cheque for Rs.3,75,000/- given to the plaintiff in lieu of security payable on dated 28.2.2017 was stopped for the said reason.

4. During the course of proceedings before the trial Court, the plaintiff had filed an application under Order 15 Rule 5 read with Section 151 CPC contending that the defendants had not paid or tendered amount of Rs.15 lakhs and subsequently Rs.1,25,000/- per month as rent and service tax for use and occupation of the disputed property when it was mandatory for them to deposit Rs.15 lakhs on the first date and continue paying Rs.1,25,000/- along with service tax as rent every month, therefore their defence is liable to be struck of.

5. The application was opposed on behalf of the defendants.

6. After hearing arguments, the trial Court vide the impugned order dated 25.3.2019 dismissed the application. For ready reference, the operative part of the order is being reproduced as under:

> *After hearing the contention and rival contention, I am of the considered view that the plaintiff/applicant had filed the present suit for recovery of the amount of rent worth Rs.15 lacs as he had entered into lease agreement dated 09.02.2017 with the defendants/respondents. A lock-in period of two years was due to expire on 31.01.2019 prior to which, defendants/respondents could not vacate the suit property. The total lease period was for 5 years that up to 31.01.2022. As the defendants/respondents had failed to pay the rent, the present application has been filed for the recovery*

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of the amount of Rs.15 lacs as well as the rent worth Rs.1,25,000/- per month during the pendency of the suit. However, perusal of the case file reveals that the defendants/respondents filed the conter claim alleging that they are not in the possession of the disputed property. They had took it on rent vide lease dated 09.02.2017, but the fire incident occurred on 20.02.2017 and his goods and material got damaged. The defendant/respondents had further alleged that due to his political influence, the plaintiff/applicant got false FIR registered against the defendants/respondents. The plaintiff has claimed that the defendants/respondents are still in the possession of the suit property whereas the defendant/respondents had denied this fact. This court has passed the order on 12.09.2018 and the LC was appointed to assess the material of the defendants/respondents lying in the disputed property as an application was moved by the plaintiff/applicant to permit him to repair the suit property whereas the defendants/respondents had sought the permission to take their material out from the disputed property. A Local Commissioner was appointed who tendered his report on 14.09.2018. The suit property was handed over to the plaintiff/applicant on 13.09.2018 and the plaintiff was given the permission to let out the same on rent to somebody else but the question of the relationship between the parties to the suit was left to be decided at that stage which would be decided after the evidence would be led by both the parties. So, in these circumstances, the present application cannot be allowed as the

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plaintiff/applicant had claimed that the defendants/respondents were in possession of the suit property whereas the defendants/respondents had alleged that the plaintiff/applicant had not permitted to him to enter into suit property after the fire instance and had filed his counter claim for damages. Thus the present application for strucking of the defence of the defendants/respondents moved by the plaintiff/applicant is hereby dismissed. Now to come upon 25.04.2019 for filing the reply of the counter-claim by the plaintiff.

7. Feeling aggrieved by this order, the plaintiff has come to this Court by way of filing the instant revision petition, notice of which was given to the respondents, who put in appearance through counsel.

8. I have heard learned counsel for the parties besides going through the record.

9. Learned counsel for the revision petitioner has argued that provision of Order 15 Rule 5 CPC as amended by this Court is mandatory and defendants were required to comply with the same and they having not done so, their defence should have been struck of but the trial Court ignoring the said provision has rejected the application so filed by the plaintiff wrongly and in an illegal manner. In support of his that contention, he has referred to judgment ***Asha Rani Gupta Versus Sri Vineet Kumar, 2022(3) RCR(Civil)540*** by the Apex Court.

10. Whereas learned counsel appearing for the respondents/defendants has contended that the case of the defendants is that they are not being allowed to enter the premises, which got burnt in

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the fire incident on 20.2.2017 and a part of their machinery and material are lying there which are being illegally detained by the plaintiff for that reason the plaintiffs are not entitled to claim any arrears of rent or rent for the past and current period, rather the defendants have suffered damages for which they have filed a counter claim. He has contended that the trial in this case is at advance stage and now the case is fixed for 24.2.2023 for tendering of documents by the defendants.

11. After hearing the rival contentions, I find that keeping in view the facts and circumstances of the case only after recording evidence, it can be found out as to version of which party is correct and acceptable. Order 15 Rule 5 CPC deals with striking of defence on failure to deposit admitted rent. The instant case is one, where the defendants are disputing their liability to pay rent to the plaintiffs. The question whether they are liable to pay rent or not can be determined on conclusion of trial and striking of defence of defendants in terms of Order 15 Rule 5 CPC is not called for under the circumstances. The trial Court was justified in rejecting that application.

12. The judgment referred to by learned counsel for the petitioner Asha Rani Gupta case (supra) does not help the petitioner in any manner due to the different facts and circumstances of the case and the context in which observations had been made.

13. The impugned order passed by the trial Court is quite detailed and well reasoned and it does not suffer from any illegality or infirmity and is not having any element of arbitrariness or perversity. The revisional jurisdiction of this Court is quite limited and considering the facts and

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circumstances of the case, there is no reason to interfere with the impugned order by way of exercising the revisional jurisdiction.

14. Finding no merit in the revision petition, the same stands dismissed.

However, the trial Court is directed to make earnest endeavour to complete the trial and then dispose of the case on merits expeditiously.

Since the main revision petition has been dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

14.2.2023 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No

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