

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

CR-4414-2023

Decided on:-07.08.2023

Renu Sharma

....Petitioner

VS.

Deepak Khaneja

....Respondent.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. G.C. Shahpuri, Advocate,
for the petitioner.

HARKESH MANUJA J. (Oral)

1. By way of present revision petition, challenge has been laid to an order dated 06.07.2023, passed by the learned Rent Controller-cum-Executing Court, Jagadhri, whereby, the objections filed at the instance of petitioner-judgment debtor, in the execution proceedings, have been dismissed.

2. Briefly stating, an eviction petition came to be filed at the instance of respondent-londlord, wherein, the rent was assessed provisionally by the learned Rent Controller, vide order dated 28.07.2022 and the date for its deposit was fixed as 10.08.2022.

3. Petitioner-tenant having failed to deposit the aforesaid amount, the learned Rent Controller passed an eviction order dated 10.08.2022. Based thereupon, respondent-landlord filed execution petition, whereas, on the other hand, petitioner-tenant challenged the eviction order dated 10.08.2022, before the Appellate Authority.

4. The Appellate Authority, at the time of preliminary hearing directed the petitioner-tenant to deposit the amount of rent provisionally assessed by the Rent Controller and the grant of stay upon the order of eviction passed by the Rent Controller was made conditional thereupon. Simultaneously, petitioner-tenant filed objections before the Executing Court while submitting that as per the rent agreement entered into between the parties, a sum of Rs.2.5 lakhs was deposited by the petitioner-tenant with respondent-landlord as advance and the same was thus, to be adjusted towards the arrears of rent, besides it, another sum of Rs.2 lakhs was taken as advance by the respondent-landlord from the petitioner-tenant, which also was required to be accounted for towards arrears. The Executing Court vide order dated 06.07.2023, dismissed the objections filed by the petitioner-tenant with the following observations:-

“As far as the objections of the JD regarding the deposition of amount of Rs.2,50,000/- before the DH as surety as well as giving an amount of Rs.2 lakh to the DH as a loan is concerned the same was required to be proved by JD by placing on record the document or receipt or by giving any other evidence to prima facie prove the same. However, no such evidence or material has been placed on record. Further the decree of eviction has already been passed against the JD and now this court being the executing court cannot go behind the decree and adjudicate on the above-said complaint.”

5. Impugning the aforesaid order, learned counsel for the petitioner-tenant vehemently submits that as per rent agreement dated 10.01.2014 (Annexure P-8), an advance of Rs.2.5 lakhs was deposited by the petitioner-tenant with the respondent-landlord and the same was thus,

required to be adjusted against the arrears of rent in the eviction proceedings. Relevant clause 15 of the rent agreement, relied upon by learned counsel for the petitioner is reproduced hereunder:-

“15. That the first party has handed over an amount of Rs.2,50,000/- (Two lakh Fifty Thousand only) to the second party as security amount and when the vacant possession of the shop will be handed over by the first party to the second party, the said security amount shall be refunded to the first party without any interest.”

6. I have heard learned counsel for the petitioner and gone through the paper book.

7. Perusal of clause 15 as relied upon by learned counsel for the petitioner from the agreement of tenancy dated 10.01.2014, shows that a sum of Rs.2.5 lakhs was deposited as security by the petitioner-tenant with the respondent-landlord, however, the same was refundable without interest only at the time when the petitioner-tenant was to surrender vacant possession of the shop in question to the respondent-landlord. In the present case, admittedly, the petitioner-tenant has never offered or surrendered vacant possession of shop in question to the respondent-landlord. Moreover, the admissibility as well as the evidentiary value, besides the adjustment of the security amount as alleged by the petitioner is debatable, at this stage, as the said document does not form part of the evidence before the Rent Controller and thus, cannot be relied upon.

8. Considering the fact that the petitioner failed to deposit the amount of rent provisionally assessed by the Rent Controller, followed by eviction order dated 10.08.2022, finding no merits in the present petition, the same is thus, dismissed.

9. However, it is made clear that any observation made in this order shall not be construed as an expression of opinion on the merits of eviction proceedings pending before the Appellate Authority.

07.08.2023

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/ No

(HARKESH MANUJA)

JUDGE