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

CWP No.19173 of 2023

Date of Decision: 12.10.2023

Kasim

..... Petitioner

Versus

**Commissioner, Gurugram Division, Gurugram
and others**

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Atul Yadav, Advocate
for the petitioner.

RAJESH BHARDWAJ, J.

Present writ petition has been filed for issuance of a writ in the nature of certiorari for quashing the impugned order dated 25.07.2022 (Annexure P-4) passed by respondent No.1 as well as order dated 23.12.2020 (Annexure P-2) passed by respondent No.2 respectively, whereby the ejection of petitioner has been ordered from the shop in question and the petitioner has been directed to deposit a sum of Rs.4,62,262/- along with interest @ 25% per annum in lieu of rent. Further prayer has been made for staying the operation of impugned order dated 25.07.2022 (Annexure P-4) passed by respondent No.1 as well as order dated 23.12.2020 (Annexure P-2) passed by respondent No.2 and for stay of dispossession of the petitioner from the shop in question during the pendency of the present petition.

Brief facts of the case are that the shop in question was let out by respondent No.3 to the petitioner on monthly rent at the rate of Rs.4500/- in an open auction held on 22.02.2012. As per the terms and conditions of the auction, the petitioner was to deposit rent on monthly basis, however, the petitioner deposited the rent for shop No.71 up to 17.07.2014 and thereafter, the rent was not deposited. The petitioner was issued notice by respondent No.3 for depositing the rent but the same was not deposited. In reply to the same, the petitioner informed that he had sublet the aforesaid shop on 11.03.2014 to one Rajiv Kumar and hence, the further rent would be paid by Rajiv Kumar. As the petitioner had not deposited the rent from 17.07.2014, the arrears of rent up to 06.02.2022 amounted to Rs.4,62,262/-. On the basis of the same, respondent No.3 filed the petition under the Haryana Public Premises & Land Eviction Recovery Act, 1972 for eviction of the petitioner before the Assistant Collector First Grade, Pataudi. After hearing both the sides, the learned Assistant Collector accepted the same and directed respondent No.3 to take the possession in due process of law. The petitioner was directed to deposit the arrears of rent of Rs.4,62,262/- along with interest at the rate of 24% per annum vide order dated 23.12.2020. Aggrieved by the same, the petitioner filed an appeal before the Commissioner, Gurgaon Division, Gurugram. The learned Commissioner issued notice to respondent No.3 and heard both the sides. On hearing both the sides and perusing the record, the learned Commissioner found no merit in the appeal filed and thus, dismissed the same vide impugned order dated 25.07.2022. Thus, the eviction of the petitioner as ordered by the Assistant Collector 1st Grade,

Pataudi had been upheld by the Appellate Court. Aggrieved by the same, the petitioner is before this Court by way of filing the present petition.

Learned counsel for the petitioner has vehemently contended that both the Courts below have fallen in error in passing the impugned orders as it suffers from patent illegality and perversity and thus, being unsustainable in the eyes of law, deserve to be set aside. It has been contended by learned counsel for the petitioner that the shop in question was taken on rent by the petitioner on 22.02.2012 in an open auction and an amount of Rs.1,00,000/- was deposited as security. He submits that as the petitioner was unable to run his business, hence, he applied for transfer of his shop in the name of his business partner, namely, Rajiv Kumar on 14.03.2014. He requested that he had deposited the rent up to 14.03.2014 and in future, the rent would be deposited by Rajiv Kumar. He submits that as since 14.03.2014, Rajiv Kumar is using the shop in question, hence, he was liable to pay the rent from 14.03.2014 but respondent No.3 issued notice to the petitioner on 20.12.2017 demanding Rs.1,98,000/- along with interest of Rs.23,760/- and thus, total amount of Rs.2,21,760/-. He submits that the petitioner filed reply to the notice explaining the position. However, without deciding the same, respondent No.3 filed the petition under the Haryana Public Premises & Land Eviction Recovery Act, 1972 for ejectment of the petitioner, which is totally against the settled principles of law. He submits that the learned Assistant Collector illegally passed the ejectment order qua the petitioner on 23.12.2020, which is totally illegal and thus, unsustainable in the eyes of law. He has submitted that aggrieved by the same, the petitioner filed an appeal before

the Commissioner. He submits that the Appellate Court passed a cryptic and non speaking order dated 25.07.2022. He submits that no proper and effective opportunity was afforded to the petitioner and the ejectment order was passed by passing a non speaking order. He further submits that it has been wrongly observed that the petitioner had sublet the shop to Rajiv Kumar whereas the petitioner had submitted his file for transfer of the shop in the name of his business partner, Rajiv Kumar. It has been submitted that his business partner, Rajiv Kumar was using the shop since 2014, hence, he was liable to pay the rent thereafter, however both the Courts failed to appreciate the same. He submits that the learned Assistant Collector while deciding the petition filed by respondent No.3 did not frame any issues for decision of the case. He submits that no notice was issued as enumerated in Section 4 of the Act. It has been submitted that the view taken by both the Courts below is against the settled principles of law and thus, deserve to be quashed.

I have heard learned counsel for the petitioner and perused the material on record.

After hearing learned counsel for the petitioner and perusing the record, it is apparent that the petitioner took shop No.71 in an open auction on 22.02.2012. As per the terms & agreement, the petitioner was to pay the monthly rent at the rate of Rs.4500/-. Though he paid the rent up to 17.07.2014, however, thereafter he failed to deposit the same and hence, respondent No.3 issued the notices dated 24.05.2016, 12.12.2017, 20.12.2017 and 17.05.2019 for depositing the rent but no action was taken by the petitioner on the same. Thereafter, he informed that he had sublet

the shop on 14.03.2014 to Rajiv Kumar. The arrears of rent towards the petitioner from 17.07.2017 to 06.02.2022 was amounting to Rs.4,62,262/-. As the petitioner had sublet the shop to Rajiv Kumar, the same was in violation of Section 3(a) and 3(c)(i)&(ii) of the Haryana Public Premises of Land (Eviction and Rent Recovery) Act, 1972.

Even if the petitioner had applied for transfer of the shop, there is nothing on record to show that the same was accepted. Thus, the petitioner was legally bound to pay the rent as per terms & conditions of the agreement, which he totally failed to comply with. Thus, the arrears of rent as already mentioned amounting to Rs.4,62,262/- had not been paid and hence, the petitioner was in unauthorized possession of the shop. Thus, this Court does not find any infirmity in the impugned order passed for the eviction of the petitioner. Accordingly, finding no merit in the present petition, the same is hereby dismissed.

12.10.2023

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(RAJESH BHARDWAJ)
JUDGE

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