

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR-3498-2021 (O&M)

Date of decision: 11.01.2023

M/s SKRD Vet Pvt. Ltd.

...Petitioner(s)

Vs.

Ashok Wadhwa & Another

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Neeraj Gupta, Advocate for the petitioner.

Mr. P.S. Jammu, Advocate for

Mr. Rishi Vohra, Advocate for respondents.

NIDHI GUPTA, J.

Present Revision Petition has been filed by the petitioner/defendant seeking setting aside of order dated 03.12.2021 (Annexure P8) passed by learned Civil Judge (Junior Division), Gurugram vide which application (Annexure P6) filed by respondents/plaintiffs under Order 15 Rule 5 of CPC in Civil Suit No.2310/2021 titled as "Ashok Wadhwa& Another Vs. M/s SKRD Vet Pvt. Ltd." has been allowed.

Brief facts of the case are that the petitioner is engaged in pet-healthcare services and is running pet-clinic in shop/office premises No.DG-51, Ground Floor, Rodeo Drive, Arcadia-II, South City-2, Sector 49, Gurugram, Haryana. The petitioner had taken the said premises on lease from the respondent No.1 at a monthly rent of Rs.35,000/- vide three-year Lease Deed dated 06.10.2018.

As the petitioner found the abovesaid premises insufficient for the clinic, he signed another three-year Lease Deed dated 09.10.2018 with

respondent No.2 herein for taking on lease adjoining office/space premises No.DG-50, Ground Floor, Rodeo Drive, Arcadia-II, South City-2, Sector 49, Gurugram, Haryana on a monthly lease rent of Rs.20,000/- (both shops No. 50 and 51 are hereinafter referred to as “the demised premises”). It is the pleaded case of the petitioner that the petitioner invested almost Rs.20-25 lakh for setting up infrastructure and medical equipment in the aforesaid premises to start functioning of his clinic. However, it is stated that the petitioner started facing infrastructural problems soon thereafter as there was no proper drainage and he faced water problems also. It is submitted that the petitioner informed the respondents about these problems telephonically several times, however, the respondents did nothing about the same and only gave false assurances.

It is further stated that due to water and drainage problems in the clinic, there was constant smell of sewage which made the visitors to the clinic very uncomfortable and therefore, work of the petitioner suffered. Despite this, the petitioner kept on paying the lease amount to the respondents. It has been stated that despite Covid-19 pandemic, he kept on paying the rent till 31.01.2019. However, thereafter on 02.02.2020, the petitioner telephonically informed the respondents that he was suffering due to poor infrastructure, water and drainage problems in the demised premises which had not been rectified despite frequent requests and therefore, he was not able to pay further rent and maintenance charges till the said problems were resolved. It has further been stated on behalf of the petitioner that he was unable to vacate the demised premises despite the acute problems as he had invested a lot of money to set up the

clinic and spent a lot of money in maintenance and upkeep of the demised premises.

On 27.03.2021, the petitioner also sent a legal notice to the respondents calling upon them to rectify the defects in said premises so that he could restart the clinic operations and restart payment of monthly rentals.

However, to the utter shock of the petitioner, on 22.06.2021, both the respondents herein filed one Suit for recovery of possession, arrears of rent along with consequential relief under Order 39 Rule 2 CPC against the petitioner. During the pendency of the aforesaid Suit, the respondents moved an application under Order 15 Rule 5 read with Section 151 CPC for direction to the petitioner to deposit arrears of Lease Rent due till pendency of the present Suit. It is this application which has been allowed by the learned Civil Judge (Junior Division), Gurugram vide impugned order dated 03.12.2021 whereby the petitioner has been directed to pay outstanding rent with interest at the rate of 9% per annum, failing which the petitioner would lose right to defend the case. Hence, the present Revision Petition.

It is vehemently submitted by learned counsel for the petitioner that the petitioner has been regularly informing the respondents telephonically as also in person several times for rectification of acute water and drainage problems. It is submitted that as the petitioner was not able to operate or use the demised premises, therefore, there was frustration of contract and therefore, he was not liable to pay the rent as

assessed by the learned trial Court. It is further submitted that during Covid-19 pandemic, the entire world faced business problems including the petitioner, whose vet clinic has suffered badly.

Learned counsel for the petitioner refers to Lease Deed (Annexure P2) to submit that in Para 13 thereof it is mentioned as hereinbelow:-

“13. FORCE MAJEURE:

Both the parties shall not be liable for failure to perform or any delay in performing their obligation under this Agreement when and to extent that such failure or delay is due to force majeure. The term “force majeure” shall include, but not limited to accidents, fires, floods, acts of God or the public enemy, embargoes, wars (declared or undeclared), riots, civil commotion, interference by civil or military authorities, terrorist acts, Government actions, order(s) or request(s), including (without limitation) certification, clearance or other document, or any other cause or contingency beyond the control of the parties and in any of the aforesaid events”

It is submitted that accordingly, in view of the Covid-19 pandemic where lives of people all over the world have been affected and due to imposition of lockdown, the petitioner was unable to operate his clinic and therefore, *force majeure* clause would be invoked as the pandemic was a contingency beyond the control of the parties. Also, as per the said clause, in case of *force majeure*, neither party shall be liable to perform his part of the obligation. It is submitted that in addition to the above contingency, there are basic infrastructural defects in the demised premises which amounts to frustration of contract between the parties, as the demised premises have been non-functional for which in fact, the petitioner is entitled to claim monetary damages from the respondents.

On a Court query, learned counsel for the petitioner very fairly admits that no intimation in writing was ever made to the respondents in respect of the defects in the demised premises.

In response, learned counsel for the respondents/landlords refers to the finding of the learned trial Court in Para 13 of the impugned order to submit that the learned trial Court has noted that *“he fairly admitted that no notice in writing was ever given by the defendant to the plaintiffs but this issue was raised through reply to the notice issued by the plaintiffs.”* Learned counsel submits that it has accordingly been admitted by the petitioner that the respondents received no communication whatsoever regarding any alleged defect in the demised premises.

It is further submitted that in case there are such severe defects in the premises in question, it is always open to the petitioner to vacate the said premises forthwith. However, the petitioner cannot have it both ways i.e. he refuses to vacate the premises despite the defects, and also admittedly no rent has been paid to the respondents since February, 2020. Learned counsel for the respondents further submits that present Revision Petition is premature and cause of action would have arisen to the petitioner if his defence would have been struck off. It is submitted that accordingly, present Revision Petition deserves to be dismissed on grounds of lack of cause of action.

It is further submitted that application under Order 15 Rule 5 read with Section 151 CPC was filed by the respondents only seeking payment of rent in respect of the demised premises which are admittedly

in occupation of the petitioner. Therefore, it is clear that the petitioner wants to enjoy the premises without paying rent.

It is further submitted that the petitioner had also filed an application under Order 7 Rule 11 CPC for rejection of the plaint on the ground of misjoinder of cause of action/parties. It is submitted that under Order 7 Rule 11 CPC, misjoinder of parties or cause of action is not a ground.

It is also submitted that if, as per the petitioner, the contract is frustrated, then it is open to the petitioner to vacate the demised premises. It is further submitted that the petitioner cannot take both the pleas simultaneously. If he is still the tenant, he has to pay the rent.

In rebuttal, it is submitted by learned counsel for the petitioner that the petitioner has invested a lot of money in the demised premises and therefore, he is unable and has no option to vacate the said premises.

No other submission is made on behalf of the parties.

I have heard learned counsel for the parties.

A perusal of record of the case shows that admittedly, the petitioner is unable to show that he had at any stage communicated to the respondents regarding the alleged structural and infrastructural defects in the demised premises. This fact has even been noticed in the impugned order. Even before this Court, learned counsel for the petitioner has very candidly admitted that he cannot produce anything to show that any notice in writing was ever given by the petitioner to the respondents and it is only

by way of reply to the notice issued by the respondents, that the petitioner first raised this issue.

It has further been admitted by learned counsel for the petitioner that he has not paid rent since February, 2020 and that he is still in possession of the demised premises despite expiry of the lease period.

In view of the admitted position as noted above, I find absolutely no merit in the present Revision Petition and the same is hereby, dismissed.

Pending application(s) if any also stand(s) disposed of.

11.01.2023

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No