

on the existing rent.

4. Learned counsel for the petitioner has submitted that the petitioner/defendant appeared before the Court and thereafter, on 08.12.2022, filed written statement. The petitioner/defendant admitted that period of tenancy was three years. Since the lease agreement was for a period of more than one year, so, the lease agreement was not registered. So, the same cannot be looked into for any purpose. No notice for termination of tenancy was served upon the petitioner/defendant. The lock down was imposed throughout the country w.e.f. March 2020 to August 2020 in view of COVID-19 pandemic. The petitioner/defendant could not use the tenanted premises for gym activities, for which the premises was taken on rent. It was further submitted that immediately thereafter, in the month of February 2021, again gyms, schools etc. were ordered to be closed by order of the Government, which remained effective for 4-5 months. However, the petitioner/defendant, with great difficulty, kept paying the rent to the respondents/plaintiffs in cash on their demand, after withdrawing the same from the bank account. The petitioner/defendant spent a sum of Rs.2,00,000/- on repair/renovation of the demised premises. It was further submitted by the petitioner/defendant in the written statement that the respondents/plaintiffs and their sons were regular members of the gym. Their memberships started in the month of January 2020 @ Rs.20,000/- per person annually. They requested the petitioner/defendant to adjust their annual fee from rent to be paid to them. So, a sum of Rs.80,000/- was adjusted from rent. Respondent/plaintiff namely Nidhi and her husband

Karan Sorout of the aforesaid members also availed service of personal

trainer, for which charges were @ Rs.10,000/- per month each person. The said fee of Rs.20,000/- per month was also adjusted from rent. It was the further contention of petitioner/defendant that the demised premises was constructed and completed more than 10 years ago at the time of institution of present suit, so, the provisions of Haryana Urban (Control of Rent & Eviction) Act, 1973 (for brevity – Rent Act) are applicable to the property in dispute.

5. I have heard learned counsel for the petitioner and perused the case file.

6. The instant suit has been filed on 02.11.2020 for possession of the demised premises by way of ejectment and for recovery of total rent amount of Rs.8,40,000/-. Five notices were sent to the petitioner/defendant by the respondents/plaintiffs, through different modes. The speed post was received back with the report of refusal and courier was served upon the employee of the petitioner/defendant. There is no dispute that the premises was taken on rent in the year 2016 for a period of three years @ Rs.1,05,000/- per month. So, relationship of landlord and tenant is not in dispute. As per the provisions of Order XV Rule 5 CPC (as applicable to the State of Haryana), the petitioner/defendant cannot escape the liability to pay the monthly rent during pendency of the case. Order XV Rule 5 CPC, as incorporated by this Court, vide notification dated 13.5.1991, for the State of Punjab, Haryana and Union Territory of Chandigarh, reads as under :-

Order XV. Rule 5.

“(1) In any suit by a lessor for the eviction of a lessee after the determination of his lease and for the

recovery from him of rent or compensation for use and occupation, the defendant shall, at or before the first hearing of the suit, deposit the entire amount admitted by him to be due together with interest thereon at the rate of nine per cent per annum and whether or not he admits any amount to be due, he shall throughout the continuation of the suit regularly deposit the monthly amount due within a week from the date of its accrual, and in the event of any default in making the deposit of the entire amount admitted by him to be due or the monthly amount due as aforesaid, the Court may, subject to the provisions of sub-rule (2) strike off his defence.

Explanation 1 : *The expression 'first hearing' means the date for filing written statement or for hearing mentioned in the summons or where more than one of such dates are mentioned in the last of the dates mentioned.*

Explanation 2 : *The expression 'entire amount admitted by him to be due' means the entire gross amount whether as rent or compensation for use and occupation, calculated at the admitted rate of rent for the admitted period of arrears, after making no other deduction except the taxes, if any, paid to a local authority in respect of the building on lessor's account and the amount, if any deposited in any court.*

Explanation 3 : *The expression 'Monthly amount due' means the amount due every month, whether as rent or compensation for use and occupation at the admitted rate of rent, after making no other deduction except the taxes, if any, paid to a local authority, in respect of the building on lessor's account.*

(2) *Before making an order for striking off*

defence, the Court may consider any representation made by the defendant in that behalf provided such representation is made within ten days of the first hearing or, of the expiry of the week to in sub-section (1) as the case may be.

(3) The amount deposited under this rule may at any time be withdrawn by the plaintiff :

***Provided** that such withdrawal shall not have the effect of prejudicing any claim by the plaintiff disputing the correctness of the amount deposited :*

***Provided** further that if the amount deposited includes any sums claimed by the depositor to be deductible on any account, the Court may require the plaintiff to furnish the security for such sum before he is allowed to withdraw the same.”*

7. From the perusal of the above, it would be clear that there are two parts of Order 15 Rule 5(1) CPC. The first part casts an obligation upon the lessee to make payment of the entire amount admitted by him to be due together with interest on the first date of hearing, failing which the court has the power to strike off the defence of the defendant. The second part envisages a situation where the defendant may or may not admit any amount to be due but nonetheless an obligation is cast upon him to pay throughout the continuation of the suit such monthly amount which is due within a week from the date of its accrual, failing which the Court has got the power to strike off the defence. Reliance in this regard may be placed on the law laid down by this Court, in the case **Mrs.Ablinder Chawla vs. R. K. Gupta** reported as **1994 (2) Punjab Law Reporter 219**. In this authority, it was inter alia held by this Court that the object behind the addition of this

provision seems to be that no landlord should be deprived of his right to receive the rent and no tenant should be allowed to live in the premises free of charge simply because all sorts of pleas can be taken in the pleadings. In another judgment titled Anand Devi vs. Om Parkash reported as 1987 (Supp) SCC 527, Hon'ble Supreme Court has considered the provisions of Order 15 Rule 5 CPC, which were incorporated in the CPC for the State of Uttar Pradesh in the year 1972, as re-enacted in the year 1976. The amended provisions of Order 15 Rule 5 CPC, as applicable to the State of Uttar Pradesh, are in pari-materia with the provisions of Order 15 Rule 5 CPC which have been added by this Court in the year 1991 for the States of Punjab & Haryana and Union Territory of Chandigarh, as referred to above. It has been held by their Lordships of Hon'ble Supreme Court that the tenant having failed to comply with the requirements of Order 15 Rule 5 CPC by not depositing the arrears of rent together with interest, etc., the application filed by landlord for striking off the defence ought to have been allowed and the suit for eviction filed by landlord should have been decreed. Resultantly, the orders passed by the Additional District Judge and the High Court were set aside and the decree for eviction was passed against the tenant.

7. In the present case, the petitioner/defendant was required to give representation as per provision of sub-section (2) of Rule 5, as discussed above, within the prescribed time. It means that right has been given to the petitioner/ defendant to show that in fact, there has been no default or that there is bona fide mistake. The Court can consider the representation on the basis of any other material, which may be available on record and if finds that there is no default and also, there is good reason for the same, then the

Court is not bound to strike off the defence. On the other hand, in case where it is apparent that default has been committed by the defendant and no good reason is shown, either by making a representation or otherwise from the material on record, the Court can strike off the defence. In the case in hand, there is only oral averment of the petitioner/defendant that he has paid the rent in cash and no rent is paid for the subsequent period during the pendency of the case. There is no material brought on record that the rent amount was paid to the respondents/plaintiffs. Merely saying that provisions of the Rent Act are applicable and Civil Suit could not be filed, is not a ground to give benefit to the petitioner/defendant.

8. Keeping in view that neither any representation under Rule 5(2) of Order 15 CPC was filed within stipulated time period, nor the petitioner/defendants has placed any material on record to make out a case for not striking off his defence and the petitioner/defendant has even failed to deposit the monthly rent due, during pendency of the suit, the learned Trial Court is perfectly justified in striking off the defence of the petitioner/defendant.

9. In view of the above discussion, this Court does not find any merit in the present revision petition, which is accordingly dismissed in limine.

10. Pending applications, if any, shall stand disposed of along with this judgment.

January 30, 2024
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.