

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

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2024:PHHC:005445

CR-6191-2022

Date of decision: 16.01.2024

SHAMSHER SINGH

..Petitioner

Versus

RAJ RANI

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Nilesh Bhardwaj, Advocate
and Mr. Akhil Kamra, Advocate
for the petitioner.

Mr. Sanjiv Kumar Aggarwal, Advocate
and Mr. Ojas Bansal, Advocate
for respondent.

ANIL KSHETARPAL, J(Oral)

1. This revision petition has been filed by the defendant against an order passed in a civil suit filed for seeking his ejectment and for recovery of mesne profits. It is the case of the respondent that she is owner of the premises and she gave the basement and ground floor of the premises to the petitioner on lease at the rate of Rs.60,000/-. While alleging that the building is not governed by the provisions of Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as the '1973 Act') the civil suit was filed. The defendant while contesting the suit claims that he was delivered possession of the ground floor, however, the possession of the basement continues with one Sh. Devinder and he has never been delivered possession of the basement. During the pendency of the suit, the respondent filed an application under order XV Rule 5 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC'), which was inserted by the State of Punjab, Haryana and Union Territory, Chandigarh. The same reads as

“Order XV Rule 5:- Striking off defence for failure to deposit admitted rent: (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 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 the 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, 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, that Court may consider any representation made by the defendant in that behalf provided such representation is made within 10 days, of the first hearing or, of the expiry of the week referred 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.”

2. The trial Court has allowed the application on the ground that the petitioner (defendant in the suit) has failed to file the reply. It may be noted here that the petitioner (defendant before the trial Court) offered to hand over the keys of the ground floor to the landlady. The trial Court without realizing that the landlady has not filed petition under Section 13 of the 1973 Act, held that the payment has not been made within a period of 10 days from the date of first hearing and therefore, the defendant's defence was ordered to be struck off.

3. It is evident that Order XV Rule 5 of the CPC is applicable only when the defendant fails to deposit the entire amount admitted to be due by him. It enables the owner to continue receiving the amount of admitted rent during the pendency of the suit.

4. The learned counsel representing the petitioner submits that possession of the ground floor of the tenanted premises has already been handed over to the landlady, which is not disputed by the learned counsel representing the respondent.

5. The learned counsel representing the petitioner further states that the rent with respect to the ground floor upto 10.03.2022, has already been deposited in the account of the respondent, which is also not controverted by the learned counsel representing the respondent.

6. The purpose of Order XV Rule 5 of the CPC is to ensure regular payment of the amount of admitted rent to the owner/landlord during the pendency of the suit. In this case, the possession of the ground floor has already been handed over, whereas, the learned counsel representing the petitioner claims that he was never delivered possession of the basement by the landlady.

7. Keeping in view the aforesaid facts, the impugned order is set aside. The trial Court is requested to pass fresh order keeping in view the admitted facts.
8. Disposed of accordingly.
9. All the pending miscellaneous applications, if any, are also disposed of.

January 16th, 2024
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(ANIL KSHETARPAL)
JUDGE

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