

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

123

CR-7159-2023 (O&M)

Date of decision:05.03.2024

Kara Automobiles Pvt. Ltd.

... Petitioner

Vs.

Kewal Automobiles Pvt. Ltd.

... Respondent

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. Rakesh Dhiman, Advocate for the petitioner.

...

SUKHVINDER KAUR, J. (ORAL).

1. Instant revision petition has been filed by the petitioner against the order dated 31.07.2023 passed by the Rent Controller, Gurugram, vide which the application filed by the petitioner under Order 7 Rule 11 CPC was dismissed.

2. Facts which are relevant for the purpose of adjudication of the present revision petition are that respondent No.1 earlier filed a petition bearing No.RP/27/2021 under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter to be referred to as 'the 1973 Act') against the present petitioner before the Rent Controller, Gurugram. The said petition was withdrawn by the respondent stating some technical error therein and further sought liberty to file the petition afresh. Thereafter, the petitioner filed a fresh petition under Section 13 of the 1973 Act bearing No.RP/48/2021 before the Rent Controller, Gurugram on the same cause of action but without paying cost of Rs.10,000/- which was the necessary condition precedent. The petitioner preferred an application under Order 7 Rule 11 CPC on the ground that the trial Court has no jurisdiction to try and

decide the petition which was barred by law. As the building was not more than 10 years old, so provisions of the 1973 Act were not applicable. Another ground was also taken that since the second eviction petition had been instituted without payment of cost of Rs.10,000/- which was the necessary condition precedent, imposed by the trial Court in the earlier rent petition which had been dismissed as withdrawn, while granting liberty to file a fresh petition. Therefore the eviction petition was liable to be rejected. The Rent Controller dismissed the application filed under Order 7 Rule 11 CPC vide the impugned order dated 31.07.2023. So aggrieved of the said order, the revision petitioner has knocked the doors of this Court by way of filing the present revision petition.

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

4. Learned counsel for the petitioner has contended that the trial Court has failed to consider that the second eviction petition was filed without payment of cost of Rs.10,000/- which was the necessary condition precedent as imposed by the trial Court in the earlier rent petition, which had been dismissed as withdrawn, while granting liberty to file a fresh petition. Hence, the eviction petition is completely barred under Order 23 Rule 1 CPC. He has further contended that the trial Court has not appreciated the fact that the subsequent eviction petition is liable to be rejected being barred by law, in view of the fact that the said petition had been filed on the same facts and grounds as mentioned in the earlier petition and respondent No.1 had earlier abandoned their claim withdrawing the said petition. He has argued that it is also completely barred under Order 2 Rule 2 CPC, as

respondent No.1 having included whole claim in the earlier petition now cannot include and agitate the same claim in the subsequent petition. He has submitted that the trial Court has also not appreciated that it had no jurisdiction to try and decide the petition as it is barred by law as the building is not more than 10 years old, so provisions of the Act are not applicable. He has further submitted that the impugned order is patently wrong, perverse and without application of mind and it suffers from patent illegality and glaring infirmities and is liable to be set aside. He has argued that no lease deed was ever executed between the parties. Kamaljit Sachdeva (director of the petitioner's company) had already got registered FIR bearing No.162 dated 04.03.2014 on the allegations that Vipin Gupta had procured his signatures on blank papers and has further submitted that the lease deed upon which the petitioner is basing its claim had already been challenged before the competent authority.

5. So far as this contention of learned counsel for the petitioner is concerned that the suit is not maintainable before the trial Court being beyond the ambit of the 1973 Act as it is claimed by the petitioners that the premises is not 10 years old, so it is beyond the purview of the 1973 Act and the relationship of the landlord and tenant between the parties has also been denied.

6. It is a trite law that while considering the application under Order 7 Rule 11 CPC, only plaint is to be seen. The plaint cannot be rejected on the basis of allegations made by the defendant in the written statement or in the application for rejection of the plaint. One of the primary grounds for rejection of the plaint that had been taken by the petitioners was that as the

premises was not 10 years old, so it was beyond the ambit of the 1973 Act. The trial Court has rightly observed that date of construction of the property as well as the validity of the lease deed is yet to be adjudicated. So at this stage, suit cannot be thrown away at the threshold in the absence of evidence which is yet to be led by both the parties. So the trial Court has rightly observed that at this stage, the plaint cannot be rejected.

7. It has also been vehemently contended by the counsel for petitioners that the plaint is liable to be rejected due to non-payment of costs which had been imposed by the Rent Controller vide order dated 24.03.2021 as a condition precedent while giving the liberty to file a fresh petition on the same cause of action. It has been alleged that as depositing of cost was a pre-requisite for institution of the present suit, so this suit is not maintainable. The trial Court has again rightly held that the fact qua payment of cost is also a matter of evidence which cannot be adjudicated at this stage and applicability of the said order in the present case cannot be decided at this preliminary stage.

8. In the light of the above, the impugned order is a well reasoned order and does not suffer from any illegality or perversity and as such, no interference is called for in the impugned order by way of exercising the revisional jurisdiction.

9. Dismissed.

10. All pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

05.03.2024
harjeet

- | | |
|-------------------------------|--------|
| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |