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

(317)

CR-3295-2023

Date of decision: - 03.02.2026

Pardeep Khurana

....Petitioner

Versus

Dharambir Singh

....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Himanshu Arora, Advocate,
for the petitioner.

Mr. Kushagra Mahajan, Advocate
for the respondent.

VIKAS BAHL, J. (ORAL)

1. Present civil revision petition has been filed by the defendant under Article 227 of the Constitution of India for setting aside the order dated 06.05.2023 (Annexure P-9) as well as the order dated 06.05.2023 (Annexure P-10) whereby the defence of the petitioner has been struck off. Challenge is also to the order dated 02.07.2022 (Annexure P-6) whereby the application filed by the petitioner under Order 7 Rule 11 CPC was dismissed.

2. The respondent/plaintiff had filed a suit for possession along with recovery of outstanding rentals and mesne profits on the plea that the respondent was the owner of the shop bearing No.S-15, Sector 29, Leisure Valley Park, Gurugram and that the present petitioner was inducted as a tenant of the said property vide rent agreement dated



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02.02.2019 on a monthly rent of Rs.18,000/- to be paid in advance by 7th day of every English calendar month. It was further the case of the respondent that only one payment of advance rental on the date of signing of the rent agreement and one payment of Rs.18,000/- as security was paid by the petitioner and thereafter, he kept avoiding the rental payments and thus the respondent issued a legal notice dated 22.11.2021 to the petitioner/defendant. It was averred in the plaint that in the reply to the legal notice, the petitioner questioned the ownership of the respondent/plaintiff. In the said suit, the following prayers were made by the respondent:-

“On the aforesaid grounds, it is most respectfully prayed that the suit of the plaintiff be allowed throughout with costs and:

- i) a decree of possession of the Shop No. S-15, Sector 29, Leisure Valley Park, Gurugram be passed in favour of the plaintiff and against the defendant;*
- ii) a decree of recovery of Rs. 7,02,666/-(Rs. Seven Lakh Two Thousand Six Hundred Sixty Six only) on account of due rents uptill 1.01.2022 along with interest @ 9% p.a. from the date due till repayment be passed in favour of the plaintiff and against the defendant;*
- iii) a decree of recovery of mesne profits to the tune of Rs. 23,958/- (Twenty Three Thousand Nine Hundred and Fifty Eight only) per month, being agreed rent as enhanced as per the rent agreement, from the month of February 2022 with further 10% annual enhancement till delivery of actual, physical and vacant possession be passed in favour of the plaintiff and against the defendant;*
- iv) Any other or further order as this Hon'ble Court deem fit may also be passed in favour of the plaintiff and against the defendant;”*



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3. On 20.05.2022, an application was filed by the petitioner under Order 7 Rule 11 read with Section 151 CPC raising objections beyond the parameters of Order 7 Rule 11 CPC, which enumerates grounds for rejection of plaint. The said application was filed in the form of defence pleas by the petitioner. The trial Court vide order dated 02.07.2022 dismissed the said application. The said order was not immediately challenged by the petitioner. On 25.04.2023, the trial Court on an application under Order 15 Rule 5 CPC filed by the respondent was pleased to pass the following order: -

*“6. Therefore, in view of the mandatory provision of Order XV Rule V CPC and keeping in view the admitted position that respondent is residing in the premises, **the respondent is under obligation to make the payment of arrears of rent within period of seven days as provided under Order XV Rule V CPC failing which the defence of respondent tenant would be struck off at 10:30PM sharp. The petitioner is directed to supply the copy of his passbook or bank account number so that the aforesaid amount can be transferred in the bank account of landlord even without physical appearance of the respondent tenant but no further date shall be granted for payment of rent of Rs.12,66,787/- Therefore, the aforesaid application is disposed off and now to come upon 02.05.2023 for report regarding payment of rent.***

Date of Order: 25.04.2023

**(Anil Kumar Yadav)
CJ/JD, Gurugram
UID No.HR-0415.”**

A perusal of the above order would show that it was observed by the trial Court that the respondent was under obligation to make the payment of arrears of rent within a period of seven days as



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provided under Order XV Rule V CPC failing which the defence of the respondent-tenant would be struck off and the arrears of rent was mentioned as Rs.12,66,787/-. It is not in dispute that the said order was not challenged and has attained finality. Subsequent to the same, since the payment was admittedly not made, the trial Court vide order dated 06.05.2023 (Annexure P-10) struck off the defence of the petitioner and framed issues and adjourned the case for evidence of the plaintiff. It is stated that the evidence of the plaintiff is over and the case is now fixed for final arguments. The present revision petition was drafted on 15.05.2023 and apart from laying challenge to the order dated 06.05.2023 (Annexure P-10), challenge is also laid to the earlier order dated 02.07.2022 (Annexure P-6) which was passed on an application under Order 7 Rule 11 CPC.

4. Learned counsel for the petitioner has submitted that since the petitioner has already filed the written statement and the objections which he wanted to take in the application under Order 7 Rule 11 CPC have already been raised in the written statement, thus, the petitioner be permitted to withdraw the challenge to the order dated 02.07.2022 (Annexure P-6) with liberty to the petitioner to raise all pleas which have been raised in the written statement during the course of trial. Learned counsel for the respondent has no objection to the said course of action. The said prayer is reasonable and deserves to be allowed.

5. It would be relevant to clarify that along with the present revision petition, the petitioner has annexed two orders dated 06.05.2023

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(Annexures P-9 and P-10) which learned counsel for the petitioner has submitted are self-contradictory. Learned counsel for the respondent has clarified that on the judicial file, the order dated 06.05.2023 (Annexure P-10), vide which the defence of the petitioner has been struck off and the issues have been framed and the case has been fixed for evidence, is on record, whereas, the order dated 06.05.2023 (Annexure P-9) vide which warrants have been issued is not on record and the trial is proceeding in terms of the order dated 06.05.2023 (Annexure P-10).

6. Learned counsel for the petitioner has submitted that in the said circumstances, the petitioner would limit his challenge to the order dated 06.05.2023 (Annexure P-10).

7. In the said circumstances, the challenge in the present revision petition survives only qua order dated 06.05.2023 (Annexure P-10) vide which the defence of the petitioner was struck off for non-deposit of rent to the tune of Rs.12,66,787/-. The said order was passed in pursuance of the order dated dated 25.04.2023 (relevant portion of which is reproduced hereinabove), which order admittedly had not been challenged. The principle of res judicata/constructive res judicata also applies to various orders passed in a proceeding. Once the order dated 25.04.2023 directing the petitioner to deposit the amount of rent in a time bound manner was passed and it was specifically observed that in case the same was not done then the defence of the petitioner would be struck off and the said order had attained finality, then, it was incumbent upon the petitioner to deposit the said amount in pursuance of the said order or

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suffer the consequences mentioned in the order. Since he admittedly had failed to deposit the said amount, the necessary consequence of defence of the petitioner being struck off had to follow. The impugned order dated 06.05.2023 (Annexure P10) has thus been rightly passed by the trial Court and no fault can be found in the same. It would be relevant to note that even during the course of hearing today, it was put to learned counsel for the petitioner as to whether the petitioner is now ready to deposit the amount of Rs.12,66,787/- within a period of one month from today, but counsel for the petitioner, on instructions, has submitted that the petitioner is not willing to do the same. It is thus apparent that the petitioner wishes to occupy the premises without complying with the order dated 25.04.2023 which has attained finality.

8. Keeping in view the above-said facts and circumstances, the order dated 06.05.2023 (Annexure P-10) is upheld and the challenge to the same is dismissed. With respect to the order dated 02.07.2022, as stated by learned counsel for the petitioner, the petitioner is permitted to withdraw the challenge to the said order with liberty to raise all pleas which have been raised by him in the application under Order 7 Rule 11 CPC during the course of the final adjudication, if the said pleas have been raised in the written statement filed by the petitioner.

February 03, 2026
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
 Whether reportable?

Yes
 Yes