

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

250**CR-1991-2020(O&M)****Date of Decision: 22.11.2023**

Lala Mathura Prasad Trust (Regd.)

...Petitioner

Versus

Rajiv Kumar and others

...Respondents

250-A**CR-372-2022 (O&M)**

Lala Mathura Prasad Trust (Regd.)

...Petitioner

Versus

Rajiv Kumar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Sunil Chadha, Senior Advocate with
Ms. Devyani Sharma, Advocate and
Mr. Akshay Chadha, Advocate for the petitioners.

Mr. Sumit Sangwan, Advocate for the respondents.

HARKESH MANUJA, J. (oral)

1. This order of mine shall dispose of above-mentioned both civil revisions, wherein similar facts and controversy are involved. For reference, facts are being taken from CR-1991-2020 titled as 'Lala Mathura Prasad Trust (Regd.) Vs. Rajiv Kumar and others'.

2. By way of present revision petition, challenge has been made to an order dated 28.01.2020 (Annexure P-7) passed by the Rent Controller, Charkhi Dadri in rent petition No.14 dated 04.09.2017 titled

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as 'Lala Mathura Prasad Trust (Regd.) Vs. Sh. Rajiv Kumar and others', whereby an application under Order XV Rule 5 of the CPC, filed at the instance of petitioner-landlord (hereinafter referred to as 'the Trust'), was dismissed.

3. Briefly stating, claiming itself to be landlord, the petitioner (the Trust) filed an eviction petition against respondents *inter alia* on the ground of arrears of rent w.e.f. June-2016 till September-2017 @ Rs.5,000/- per month. Upon notice, the respondent-tenants filed their written statements, disputing the rate of rent. Vide order dated 04.10.2017, the Rent Controller passed an order as regards the assessment of provisional rent @ Rs.1,200/- per month w.e.f. June-2016 till August-2017. The arrears as per the aforementioned order were tendered by the respondent-tenants on the same day.

4. Later, faced with the situation, wherein the respondent-tenants failed to deposit the arrears of rent as regards the further period i.e. with effect from September-2017 onwards, the petitioner-landlord moved an application under Order XV Rule 5 of the CPC praying for striking off their defence. The aforesaid application was filed on 02.11.2019. The prayer made therein was opposed at the instance of respondent-tenants having filed their reply dated 06.01.2020. The aforementioned application came to be dismissed vide order dated 28.01.2020 passed by the Rent Controller, Charkhi Dadri.

5. Much later, in a separate but related development, the respondent-tenants filed an application invoking Section 6-A of the

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Haryana Urban (Control of Rent & Eviction) Act, 1979 (hereinafter referred to as '1973 Act'), seeking permission to deposit of arrears of rent upto 29 months i.e. from September-2017 till Jan-2020 @ Rs.1200/- per month along with interest @ 8% per annum. Notice of the said application was served upon the petitioner-landlord and a detailed reply opposing the prayer made in the said application was filed. At the first instance the Rent Controller-cum-Additional Civil Judge (Sr. Divn.), Charkhi Dadri, passed an order dated 17.02.2020, which is reproduced hereunder:-

“Fresh power of attorney is filed on behalf of respondent by learned counsel Shri Satyavan Kudawal. Further, reply to the application is also filed. At this stage, the present application is objected on the ground that a separate eviction petition is pending between both the parties, wherein, non-payment of rent is one of the grounds and after assessment of rent upon first appearance of the respondent, a rent amount for the duration of 29 months became due in that case and hence, as per specific provisions contained under Order 15 Rule 5 of CPC no separate proceedings can take place for the payment of due rent amount qua which a separate eviction petition is already pending, rather, it is mandatory for the present applicant to make the payment in that eviction petition and in case if he fails, the same should follow striking off his defence. Hence, just to defeat the already accrued right of the respondent in that earlier eviction petition, the present application has been moved. The present application is in fact not maintainable in the eyes of law. In view of aforesaid submissions, now to come up on 02.03.2020 for filing the rejoinder to the aforesaid objections/reply and for arguments on the question of maintainability.”

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6. Later vide order dated 04.03.2020, the Court allowed the application/petition under Section 6-A of 1973 Act, filed at the instance of respondent-tenants, thereby granting them permission to deposit the arrears of rent from September-2017 to January-2020 along with interest thereupon. The aforesaid order dated 04.03.2020 has also been impugned.

7. Learned Senior Counsel representing the Trust/petitioner-landlord submits that after passing of the order dated 04.10.2017, whereby the provisional assessment qua arrear(s) of rent w.e.f. June-2016 till August 2017 was made by the Rent Controller and the same was tendered by the respondent-tenants, no further deposit towards arrears was made by the respondent-tenants on month to month basis and that too without any reasonable cause, thus, the Rent Controller, went wrong while dismissing the application filed at the instance of petitioner-landlord invoking Order XV Rule 5 of the CPC.

8. While relying upon Order XV Rule 5 of the CPC, learned Senior Counsel for the petitioner-landlord further points out that the respondent-tenants even failed to move any application before the Rent Controller seeking extension of time, as contemplated therein, as regards deposit of arrears of rent on monthly basis for the subsequent period. He further submits that discretion exercised by the Rent Controller in the given facts and circumstances was wholly perverse, as any application/petition filed at the instance of respondent-tenants

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invoking Section 6-A of 1973 Act, much after the expiry of monthly arrears having become due being malafide was liable to be rejected.

9. On the other hand, while relying upon a decision passed by the Hon'ble Apex Court in case of Dina Nath (D) by LRs & Anr.Vs. Subhash Chand Saini & Ors, 2019(2) RCR (Rent) 471, learned counsel for the respondent-tenants submits that the discretion in Order XV Rule 5 of the CPC has been held to be directory and the same needs to be exercised by keeping in view the facts of each case. He further submits that after filing of application under Order XV Rule 5 of the CPC, at the instance of petitioner-landlord on 02.11.2019, all sincere efforts were made by the respondent-tenants for deposit of rent by sending money-orders in favour of the petitioner-landlord, however, the same were returned back having been refused, which compelled respondent-tenants to file petition under Section 6-A of 1973 Act being an act of bonafide.

10. Before I delve upon the merits of the controversy, it may be relevant to go through Order XV Rule 5 of the CPC, which is as under:-

“Order XV Rule 5 CPC Striking off defence for failure to deposit admitted rent, etc.-

(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

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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 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, paid to the lessor acknowledged by the lessor in writing signed by him and the amount, if any, deposited in any Court under Section 30 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972.*

Explanation 3.- (1) *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 10 days of the first hearing or, of the expiry of the week referred to in Sub-section (1), as the case may be.*

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(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.”

11. I have heard learned counsel for the parties and gone through the paper-book as well as the statutory provisions besides, the judgments cited at bar. I find substance in the submission made on behalf of the Trust/petitioner-landlord.

12. In the present case as recorded hereinabove, the eviction petition at the instance of petitioner-tenant was filed on 04.09.2017, claiming arrears of rent w.e.f. June-2016 till August-2017. An order of assessment qua provisional rent was passed by the Rent Controller on 04.10.2017 and the arrears till August-2017, as assessed by the Rent Controller, were deposited by the respondent-tenants on the same day. Admittedly thereafter, no payment towards arrears of rent on monthly basis was made by the respondent-tenants in terms of Sub-Rule 1 to Rule 5 of Order XV of the CPC, thereby compelling the petitioner-landlord to move an application dated 02.11.2019 having waited for a long period of more than 2 years, invoking Order XV Rule 5 of the CPC seeking striking off the defence of respondent-tenants. Even

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thereafter, instead of tendering the arrears of rent, the prayer made in the application under Order XV Rule 5 of the CPC was opposed by the respondent-tenants having filed reply on 06.01.2020, without there being any explanation for non-deposit of the same, post August-2017, till the date of filing of the application i.e. 02.11.2019.

13. Conversely, respondent-tenants, in order to circumvent the entire situation, invoked Section 6-A of 1973 Act, seeking permission to deposit the arrears, while stating that the same were not being accepted by the petitioner-landlord. No doubt, in terms of law laid down by the Hon'ble Supreme Court in case of **Dina Nath (supra)**, the power under Order XV Rule 5 of the CPC has been termed to be discretionary and not mandatory. Relevant Paragraph No.24 of the judgment passed in case of Dina Nath (supra) is reproduced hereunder:-

“24. It clearly emerges from the exposition of law that power vested under Section 15(7) of the Act, 1958 is discretionary and not mandatory and depends on contumacious or deliberate default and must be construed harmoniously so as to balance the rights and obligations of the tenant and the landlord and the power under Section 15(7) of Act, 1958 being an exception to be exercised with due care and circumspection.”.

Though, undisputedly, the power to strike off defence of a tenant has been held to be discretionary in terms of law laid down by the Hon'ble Apex Court in case of Dina Nath (supra), however, yet the same has been held to be regulated by the relevant facts and material available on record in a particular case while balancing the rights and

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obligations of tenant and the landlord. Reference in this regard can be made to the observations made in Paragraph No.17 of the judgment passed by Hon'ble Apex Court in case of 'Asha Rani Gupta Vs. Sri Vineet Kumar' 2023 (3) RCR (Civil) 540, which is reproduced hereunder:-

“17. With respect, the said conclusion of the High Court could only be said to be an assumptive one, being not supported by any reason. In paragraph 44, of course, the High Court observed with reference to the decisions of this Court that the discretionary power must be exercised with great circumspection but, such enunciation by this Court cannot be read to mean that whatever may be the fault and want of bonafide in the defendant/tenant, he would be readily given the so-called 'indulgence' of not striking off defence. Such an approach is neither envisaged by the statutory provisions nor by the referred decisions. In fact, such an approach would simply render the relevant provisions of law rather nugatory. The expected circumspection would require the Court to be cautious of all the relevant facts and the material on record and not to strike off the defence as a matter of routine. However, when a case of the present nature is before the Court, disclosing deliberate defiance and volitional/elective non-performance, the consequence of law remains inevitable, that the defence of such a defendant would be struck off.”.

14. In view of the aforesaid preposition of law, taking into consideration the relevant facts and the material available on record, it is apparent and evident that after passing of the order dated 04.10.2017 and tendering of arrears till August 2017, no effort was ever made by the respondent-tenants for deposit of upto date arrears of rent on

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monthly basis, till such time, the petitioner-landlord moved the application dated 02.11.2019, invoking Order XV Rule 5 of the CPC. The unexplained period of 2 years in the given facts and circumstances reflects the deceptive mind set and conduct of the respondent-tenants. Rather than facilitating the petitioner-landlord towards clearance of arrears of rent, the respondent-tenants were creating troubles for them. Thus in these facts and circumstances, the conduct of the respondent-tenants, not being genuine and bonafide, the Rent Controller committed illegality while passing the impugned order having failed to exercise discretion vested in it under Order XV Rule 5 of the CPC and struck off the defence of the respondent-tenants. The Rent Controller, went wrong while dismissing the application filed at the instance of petitioner-landlord for the reasons that a petition under Section 6-A of 1973 Act, filed at the instance of respondent-tenants seeking permission to deposit arrears of rent was pending consideration, which infact was merely a pretext and not an authentic act on their behalf, there being no reasonable excuse for two years continuous default by the tenants.

15. Furthermore, the discretion exercised by the Rent Controller while passing the order dated 04.03.2020, on an application filed at the instance of respondent-tenants, permitting them to deposit arrears of rent w.e.f. September-2017 till January-2020, defeats the very object of Order XV Rule 5 of the CPC, the application under the said provision having been filed prior to invocation of Section 6-A of 1973 Act by the respondent-tenants. The provisions of Order XV Rule

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5 of the CPC cannot be made redundant in the facts and circumstances of the present case, at the instance of respondent-tenants, who became cleverly prudent, once an application under Order XV Rule 5 of the CPC was filed against them at the instance of petitioner-landlord seeking striking off their defence. Had it been a case, wherein respondent-tenants on their own within a reasonable time of default would have approached the Rent Controller for the purpose of deposit of rent, having invoked Section 6-A of 1973 Act, even before the petitioner-landlord having invoked Order XV Rule 5 of the CPC, the situation would have been all together different. Moreover, the Rent Controller at the first instance, while passing aforementioned order dated 17.02.2020, *prima facie* recorded that the application under Section 6-A of 1973 Act was filed at the instance of respondent-tenants just to defeat the rights accrued in favour of petitioner-landlord in terms of Order XV Rule 5 of the CPC, however, later, at the time of final adjudication, the aforesaid application under Section 6-A of 1973 Act was allowed, while holding that once refusal to accept rent by the petitioner-landlord was established on record, respondent-tenants had every right to invoke Section 6-A of 1973 Act seeking deposit of arrears of rent.

On the contrary, in the entire paper-book and the record, it has no where been established even *prima facie* by the respondent-tenants that any effort was made by them for deposit or tendering arrears of rent w.e.f. September-2017 till November-2019 to the

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petitioner-landlord-trust trust. No document was produced on record from the side of respondent-tenants so as to show whether there was any refusal to receive arrears for the period from September-2017 till November-2019 or to grant of receipt against any rent payable and offered qua tenanted premises, which in fact can be the sole basis of filing of petition/application under Section 6-A of 1973 Act.

16. Resultantly, the order dated 04.03.2020 passed by the Rent Controller being also against the object, purpose as well as the statutory mandate of Section 6-A of 1973 Act, the same being illegal and perverse, thus, needs to be set aside.

17. Accordingly, both the revision petitions are allowed. The order dated 28.01.2020 passed by the Rent Controller resulting into dismissal of the application under Order XV Rule 5 of PC for striking off the defence of respondent-tenants is also set aside and the application filed at the instance of respondent-tenants invoking Section 6-A of 1973 Act, is also dismissed, however, if any arrear(s) of rent, pursuant to the order dated 04.03.2020 have been tendered by the respondent-tenants and received by the petitioner-landlord, the same rather than refunded, shall be adjusted towards the arrears.

18. Pending application(s), if any, shall stand(s) disposed off.

22.11.2023

Mangal Singh

**(HARKESH MANUJA)
JUDGE**

Whether Speaking / Reasoned :

Yes

No

Whether Reportable :

Yes

No