

Before Anil Kshetarpal, J.

RAJEEV JAWA—*Petitioner*

versus

RAMESH PAL—*Respondents*

CR No. 2646 of 2020

February 25, 2021

Code of Civil Procedure, 1908—O.15, RI.5—The question whether the order of striking of defence passed on account of default in compliance of order passed under Order 15 Rule 5, CPC, continues to “operate” even when possession of leased premises has been returned and dispute pending is only in regard to amount payable is answered in “negative” – Held, since the suit pending is only for the recovery of the amount of lease money, Order 15 Rule 5, CPC is not applicable – It can be invoked only if the owner/landlord has sought ejectment of the lessee along with pray for recovery of the amount due – Order for striking off defence set aside.

Held that, an interesting question regarding the interpretation of Order 15 Rule 5 CPC, as added by the State of Punjab and Haryana as also applicable to the UT of Chandigarh, arises. The question which in the considered opinion of the Court requires determination is “whether the order of striking off the defence of the defendant-lessee, passed on account of default in the compliance of order under Order 15 Rule 5 CPC (added by the State' amendment), can continue to operate in order to deprive the lessee an opportunity to defend the suit after the lessees have handed back the possession of the leased premises and now, the dispute is only as to what is the amount payable?”

(Para 2)

Further held that, the provisions of Code of Civil Procedure, 1908, are to help the Court to do justice and not to destroy it. Therefore, in view of the subsequent development, the suit as of now is only for the recovery of the amount of the lease money. Order 15 Rule 5 CPC is not longer applicable. At the cost of repetition, the provision of Order 15 Rule 5 CPC can be invoked only if the owner/landlord has sought ejectment of the lessee alongwith praying for recovery of the amount due.

(Para 9)

for the petitioner.

Lokesh Sinhal, Advocate
for respondent/caveator (CR No.189 of 2021).

Rakesh Dhiman, Advocate
for respondent/caveator (CR No.2651 of 2020).

ANIL KSHETARPAL, J.

(1) By this order CR No.189 of 2021, 2646 and 2651 of 2020 shall stand disposed of. Learned counsel for the parties are ad idem that these revision petitions can be disposed of by a common order.

(2) An interesting question regarding the interpretation of Order 15 Rule 5 CPC, as added by the State of Punjab and Haryana as also applicable to the UT of Chandigarh, arises. The question which in the considered opinion of the Court requires determination is “whether the order of striking off the defence of the defendant-lessee, passed on account of default in the compliance of order under Order 15 Rule 5 CPC (added by the State' amendment), can continue to operate in order to deprive the lessee an opportunity to defend the suit after the lessees have handed back the possession of the leased premises and now, the dispute is only as to what is the amount payable?” At this stage, it would be appropriate to extract Order 15 Rule 5 CPC as applicable to the State of Punjab and Haryana as also to the UT of Chandigarh:-

5. 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 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.

(3) Certain facts are required to be noticed. The petitioners herein are alleged lessees of various portions of the property C/3 Old

DLF colony, Sector 14, Urban Estate, Gurgaon. The petitioners in these three petitions are husband and wife. It is alleged that Rajeev Jawa had taken the third floor and 20% of the stilt portion on the payment of Rs.98,000/- per month whereas Neelu Jawa and others are alleged to have taken on lease the second floor and 20% of the aforesaid property. After having terminated the lease by serving a notice, respondent landlord filed a suit for ejection and recovery of mesne profits. During the pendency of the suit, an application was filed by the plaintiff-landlord under Order 15 Rule 5 CPC. The defendant-lessees contested the suit and disputed the liability. The trial Court directed the defendant-lessees to pay the amount within one month of the order failing which their defence will be struck off. The defendant-petitioner filed CR No.2646 and 2651 of 2020 which came up for hearing on 21.12.2020 and the following order was passed:-

“Learned counsel for the petitioner while drawing attention of the Court to the orders dated 24.8.2020 and 15.9.2020 passed by the Trial Court has submitted that the petitioner (defendant before the Trial Court) has already offered to hand over the possession of the leased premises to the landlord. He submits that a separate application in this regard has also been filed before the Trial Court in this regard.

Keeping in view the aforesaid facts, let the petitioner deposit the keys of the leased premises before the Trial Court within one week from today. The Trial Court is requested to forward a report thereon well before the date fixed.”

(4) It is not in dispute that the possession of the leased premises has been handed over to the plaintiff-landlord.

(5) It is pertinent to note that before handing over the possession, the Court struck off the petitioner's-defendant's defence by a separate order on the ground that the payment as directed has not been made.

(6) In these circumstances, the question as noticed above arises for determination. On a plain reading of Order 15 Rule 5 CPC, it becomes apparent that the legislature with a view to ensure that the lessee do not keep enjoying the possession of the property during the pendency of the suit, which usually takes a long time, without payment of monthly charges provided that at least the entire arrears of the

admitted amount is deposited and he further continues to pay the monthly amount throughout the continuation of the suit. It is further apparent that such a provision can be invoked only if the suit is instituted by a lesser for eviction of the lessee after determination of the lease and for recovery from him of the rent or compensation for use and occupation of the leased premises. Thus, before Order 15 Rule 5 CPC can be invoked, the suit instituted has to be for recovery of possession by eviction of the lessee and for recovery of the amount of rent or compensation for use and occupation of the said premises.

(7) It is well settled that the Code of Civil Procedure, 1908, is a procedure code. No doubt, certain substantive provisions have also been added in order to enable the Courts to do complete and effective justice. However, the striking off the defence has dire consequences. The defendant is not permitted to defend the suit once the defence is struck off. It being a penal provision has to be narrowly construed.

(8) Now, there are two reasons why this Bench is of the considered view that the orders under challenge are not sustainable. First of all, the alleged amount due is not admitted. The defendants-petitioners have disputed the liability and given various reasons. It is also apparent that the lessees had also filed a suit prior in point of time as the tenanted premises were alleged to have been sealed by the Municipal Corporation and the tenants have alleged that they were not able to peacefully enjoy the possession of the property. Hence, order 15 Rule 5 CPC could not be invoked. It may be noted here that this Court is not holding that in any case even if the defence put forth by the defendant is a moon shine, the Court cannot pass an order under Order 15 Rule 5 CPC. However, in the facts of the present case, there is a serious dispute with regard to liability. Secondly, in view of the subsequent development, the default, if any, stands purged as the possession has already been handed over. In such circumstances, particularly when now the suit is only for recovery of the amount, it will not be appropriate for the Court to not permit the lessees to defend the suit at all. After having evaluated various aspects of the case, this Bench is of the considered view that now, it is no longer appropriate to continue the operation of the order of striking off the defence. No doubt, Ms. Neelu Jawa has not challenged the order of striking off the defence, however, the same is only consequential and is dependent upon the first order directing payment. Once original order has been found to be wrongly passed then, a consequential order will also be required to be set aside.

(9) The interpretation of the provision cannot be alien to the object sought to be achieved. Still further, while interpreting the provisions of Code of Civil Procedure, it becomes more important to keep in mind the purpose for which the provision has been added. The provisions of Code of Civil Procedure, 1908, are to help the Court to do justice and not to destroy it. Therefore, in view of the subsequent development, the suit as of now is only for the recovery of the amount of the lease money. Order 15 Rule 5 CPC is not longer applicable. At the cost of repetition, the provision of Order 15 Rule 5 CPC can be invoked only if the owner/landlord has sought ejection of the lessee alongwith praying for recovery of the amount due.

(10) Keeping in view the aforesaid facts, the orders of striking off the defence are set aside and the petitioners are permitted to defend the suit.

(11) Disposed of.
