
(12) The preamble of the Constitution secures to all its citizens "Justice, Social, Economic and Political Equality of status and of opportunity and to promote among them all Fraternity assuring dignity of the individual and the unity and integrity of the nation." Besides the social philosophy now permeating the Indian Republic, the modern concepts of criminology which recognise reformation and rehabilitation as the primary objective of imprisonment, militate against any such archaic practice of categorising prisoners into 'B' and 'C' on the basis of social and economic status.

(13) After considering the various aspects of the classification of the prisoners, I am of the considered opinion that there is no justification for the continuation of the prevailing system of classification of prisoners into class 'A' 'B' and 'C'. I am also of the opinion that paragraph 576-A of the Punjab Jail Manual is unconstitutional and there cannot be any classification of convicted prisoners on the basis of their social status, education or habit of living to which they have been accustomed to, namely the superior mode of living. Accordingly I quash paragraph 576-A of the Punjab Jail Manual as ultra vires and unconstitutional.

(14) The petitions are, accordingly, dismissed.

R.N.R.

Before V.M. Jain, J.

M/S SARAS PAPER PACK,—*Petitioner*

versus

SHYAM SUNDER,—*Respondent*

C.R.No. 4201 of 1999

12th July, 2000

Code of Civil Procedure, 1908—O.XV Rl. 5—Defendant failed to deposit arrears of rent on the first date of hearing and the monthly rent due—Trial Court striking off the defence—No representation of any kind made by defendant—Merely because the defendant had taken some pleas in the suit would not entitle him not to deposit the monthly amount due during the pendency of the suit—Defendant not entitled to further time to deposit the rent—Order of the trial Court justified.

Held that, the defendant had neither deposited the arrears of rent admitted by him on the first date of hearing nor he had deposited the monthly rent due during the pendency of the suit, whether or not he was admitting any amount to be due. Merely because the defendant

had taken the plea in the Civil Suit filed by Shyam Sunder that there was no relationship of the landlord and the tenant between the parties would not entitle the defendant not to deposit the monthly amount due during the pendency of the suit (even if the defendant had denied the relationship of landlord and tenant between the parties). This is specially so, when prima facie there is material on the record to show that the defendant had issued two cheques in favour of Shyam Arora—plaintiff towards the rent. Similarly, merely because in Civil Suit filed by Smt. Bharti Arora and another, the defendant had taken the plea that building in question was more than 10 years old and hence civil court had no jurisdiction to entertain and decide the present suit, by itself, would be no ground for the defendant not to deposit the arrears of rent admitted by him to be due on the first date of hearing and to go on depositing the monthly amount due within a specified period till the decision of the suit. This is specially so, when the defendant had not denied the relationship of landlord and tenant between the parties.

(Paras 19 & 20)

Further held, that the court is competent to strike off the defence of the defendant for non-compliance of the provisions of 0.15 Rl. 5 CPC. However, the power of striking off the defence is not to be exercised by the trial Court mechanically. The Court is required to exercise judicial discretion on the basis of the material already on the record or which may be brought on the record by the defendant by making a representation in this regard, before passing an order striking off or not striking off the defence of the defendant on account of non-payment of rent.

(Para 20)

Further held, that the defendant had not deposited the monthly amount due nor he had moved any representation before the trial Court seeking extension of time for depositing monthly amount due till the order striking off the defence was passed by the learned trial court. Further, there is nothing on the record to show that there was any material on the record before the learned trial court which may be sufficient for the trial court not to strike off the defence for non-payment of monthly amount due. Even after the plaintiff had moved an application under 0.15 Rl. 5 CPC for striking off the defence still no representation was made by the defendant under Sub Rule (2) of Rule 5 of Order 15 CPC nor the defendant had brought any other material on the record to show that no case for striking off the defence was made out except taking the plea in the civil suit filed by Shyam Sunder that there was no relationship of landlord and tenant between the

parties and that the building in question was more than 10 years old and as such the civil court has no jurisdiction in the civil suit filed by Smt. Bharti Arora and another.

(Paras 21 & 22)

Further held, that the petitioner cannot be allowed any further time to deposit the admitted amount of rent or the monthly amount due with the trial court, after necessary orders were passed by the trial court to strike off the defence of the defendant. This is especially so, when even before this Court, the defendant has failed to bring any other material on the record to show that no case for striking off the defence was made out in either of the two cases or that any case is made out for granting more time to deposit the admitted rent or the monthly amount due. In these circumstances, the defendant would not be entitled to the exercise of discretion in his favour.

(Para 24)

Further held, that the learned trial court was perfectly justified in striking off the defence of the defendant-petitioner under Order 15 Rule 5 CPC, in both the suits especially when there was persistent default on the part of the defendant in not paying the monthly amount due during the pendency of the suit. Thus, finding no merit in these revisions, both the revisions are dismissed.

(Paras 23 & 25)

A.P. Bhandari, Advocate, *for the Petitioner.*

Harsh Aggarwal, Advocate, *for the Respondent.*

JUDGMENT

V.M. Jain, J.

(1) This order shall dispose of the above mentioned two Revision Petitions bearing No. 4125 and 4201 of 1999. These Revision Petitions are against the orders dated 18th May, 1999 passed by the Trial Court in the separate suits, striking off the defence of the defendant petitioner under Order 15 Rule 5 CPC, for non payment of rent.

(2) The facts which are relevant for the decision of Civil Revision No. 4201 of 1999, are that Shyam Sunder, Plaintiff-respondent had filed a suit for possession/eviction of the defendant-petitioner M/s. Saras Paper Pack and for recovery of arrears of rent, etc. It was alleged in the said suit that the defendant had taken the property on rent, which included property in question involved in this case, vide Rent Agreement

dated 11th November, 1994 at a monthly rent of Rs. 9,750 for a period of two years w.e.f. 1st October, 1994 and on the expiry of the said period of two years the lease period was extended from 1st October, 1996 and it was agreed that the said property shall be taken on rent in two portions at the monthly rent of Rs. 9,500 and Rs. 8,000 per month respectively and two separate Rent Agreements were prepared in this regard. It was alleged that the agreement for a portion of the property was between the said plaintiff and the defendant, while the agreement in respect of other portion of the property was between Mrs. Bharti Arora, etc. and the said defendant. It was alleged that the tenancy had been terminated by serving notice. It was alleged that the defendant was in arrears of rent. During the pendency of the suit, the plaintiff in the present petition filed an application under Order 15 Rule 5 CPC for striking off the defence of the defendant on the ground that defendant had failed to pay the rent for the use and occupation of the premises in question, on the first hearing of the suit or thereafter and thus his defence should be struck off. The said application was contested by the defendant by filing written reply, alleging therein that there was no relationship of landlord and tenant between the parties and that being so, there was no question of payment of rent.

(3) The facts which are relevant for the decision of the other Civil Revision Petition No. 4125 of 1999, are that Mrs. Bharti Arora and Mrs. Lalita Arora—Plaintiffs had filed a suit for possession/eviction against defendant—petitioner M/s. Saras Paper Pack and for recovery of arrears of rent etc., taking up similar pleas, as were taken in the other suit filed by Sham Sunder, plaintiff. During the pendency of the said suit, the plaintiffs in this case also filed an application under Order 15 Rule 5 CPC for striking off the defence of the defendant on the ground that the defendant had failed to pay the rent for use of occupation of the said property on the first date of hearing and even thereafter and thus the defence be struck off. This application in this suit was also contested by the defendant by filing written reply, alleging therein that the property in question was more than 10 years old and the provisions of Haryana Urban (Control of Rent and Eviction) Act were applicable and the Civil Court had no jurisdiction to entertain, try and decide the present suit.

(4) The Learned Trial Court, after hearing both sides and after perusal of the record, vide separate orders dated 18th May, 1999, passed in both the suits, struck off the defence of the defendant in both the suits under Order 15 Rule 5 CPC, on account of non payment of rent. Aggrieved against these orders of the Trial Court, the defendant has filed the above mentioned two Civil Revision Petitions in this court,

challenging both these orders dated 18th May, 1999 passed by the Trial Court.

(5) Notice of Motion was issued in both these cases. I have heard the Learned Counsel of the parties in both the cases and have gone through the record carefully. Since, common questions of law and facts are involved in both these cases, both these cases are being disposed of by a single order.

(6) The Learned counsel appearing for the petitioner in both the cases submitted before me that in Civil Revision No. 4201 of 1999, the relationship of landlord and tenant was denied by the petitioner, whereas in Civil Revision No. 4125 of 1999 the defendant had taken the plea that the Civil Court had no jurisdiction because the construction was more than 10 years old. It was submitted that where the defendant had denied the relationship of landlord and tenant between the parties and where the defendant had challenged the jurisdiction of the Civil Court to entertain and decide the suit, the defendant was not required to tender the arrears of rent either on the first date of hearing or to pay the rent regularly even during the pendency of the suit, till the matter was decided by the Civil Court about the relationship of landlord and tenant between the parties and about the jurisdiction of the Civil Court. Reliance was placed on *Bimal Chand Jain Vs. Gopal Agarwal*(1), *Smt. Leela Devi and another Vs. Smt. Shanti Devi Jaiswal* (2) and *M/s. Kumar Medical Agencies Vs. Smt. Nirmal and others*(3).

(7) On the other hand, the Learned Counsel appearing for the plaintiff-respondents in both the cases submitted before me that in Civil Revision No. 4201 of 1999, even though the defendant had denied the relationship of landlord and tenant between the parties, yet the defendant could not escape the liability to tender the arrears of rent on the first date of hearing and to pay the subsequent rent, in view of the fact that earlier the defendant had paid the rent to the plaintiff in October, 1996 and November, 1996, but later on the defendant had stopped paying the rent. It was submitted that the relationship of the landlord and the tenant between the parties was denied in this case, merely to prolong the decision of the suit. With regard to Civil Revision No. 4125 of 1999, it was submitted by the learned counsel for the plaintiff-respondents that the relationship of landlord and tenant between the parties was not disputed and only the jurisdiction of the Civil Court was challenged on the ground that the building was more than 10 years old. It was submitted that since the tenant was admitting

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- (1) A.I.R. 1981 S.C. 1657
 - (2) A.I.R. 1986 Allahabad 90
 - (3) 1994(1) P.L.R. 154

the arrears of rent, the tenant was liable to tender the admitted arrears of rent on the first date of hearing and to go on paying the rent for the subsequent period till the decision of the suit. Reliance was placed on *Mrs. Ablinder Chawla Vs. Shri R.K. Gupta* (4), *Bal Krishna Vs. Ramanand Dixit* (5) and *Anand Devi Vs. Om Parkash* (6).

(8) Before considering the respective contentions of the learned counsel of the parties in these two cases, it would be worthwhile to reproduce Rule 5 of Order 15 CPC, which was incorporated in Order 15 CPC by way of amendment by the High Court of Punjab & Haryana, Chandigarh, vide Notification dated 13th May, 1991, applicable to the States of Punjab, Haryana and Union Territory of Chandigarh :—

Order XV. Rule 5.

“(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 even 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 or for hearing mentioned in the summons or where more than one of such dates are mentioned in 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

(4) 1994(2) P.L.R. 219

(5) 1997(1) R.C.R. 282

(6) 1987 (Supp) S.C.C. 527

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 ten 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."

(9) A perusal of the provisions of Rule 5 of Order 15, as introduced in the Code of Civil Procedure for the States of Punjab, Haryana and Union Territory of Chandigarh, referred to above, would show that there are two parts of Rule 5. The first part casts an obligation upon the lessee to make the payment of entire amount admitted by him to be due together with interest thereon on the first date of hearing failing which the court has power to strike off the defence of the defendants. The second part envisages the situation where the defendant even does not admit any amount to be due but nonetheless an obligation is cast upon him to pay throughout continuation of the suit such monthly amount which is due within a week from the date of its accrual failing which the court has got power to strike off the defence.

(10) In both these cases, admittedly the defendant had not paid the arrears of rent at or before the first date of hearing, presumably on the ground that in the suit filed by Shyam Sunder the defendant had taken the plea that there was no relationship of landlord and tenant between the parties and as such no amount was admitted by him to be due, whereas in the other suit filed by Smt. Bharti Arora and another the defendant had taken the plea that the Civil Court has no jurisdiction to entertain and decide the suit and as such it could not be said that there was any amount admitted by him to be due. However, it is also not disputed for me that even after the first date of hearing the defendant petitioners had not deposited the monthly amount due within

a week from the date of its accrual in both the cases, which the defendant was required to deposit whether or not the defendant was admitting any amount to be due or not. That being so, the defence of the defendants in both the cases was liable to be struck off. However, before striking of the defence, the court is required to consider any representation that may be made by the defendant in that behalf, within the specified period, as provided in Sub Rule 2 of Rule 5 of Order 15 CPC. Admittedly, in the present case no representation of any kind was ever made by the defendant in either of the two suits within the specified period or even thereafter giving the circumstances under which the rent could not be deposited during the continuation of the suits.

(11) In *Jain Motor Car Company, Delhi Vs. Swayam Prabha Jain (Smt.) and another* (7), a bench of three Hon'ble Judges of the Hon'ble Supreme Court was considering the provisions of Delhi Rent Control Act, 1957. Section 15(7) of the said Act provided that if a tenant fails to make payment or deposit the rent, the Rent Controller may order the defence against eviction to be struck off and proceed with the hearing of the ejection petition. In the reported case, the tenant had failed to pay the rent and the application for condonation of delay was filed on the ground that the attorney of the tenant firm had fallen ill and partner of the firm had forgotten the date of deposit on account of being busy in connection with the election in which his brother was also a candidate. When the matter came up before Delhi High Court, it considered these facts and it was held that these facts were not sufficient to condone the delay in deposit of rent, as these acts amounted to negligence on the part of the tenant firm. It was held that if the attorney had fallen ill and one partner had forgotten the date of deposit yet there were other partners and other officials of the firm who ought to have taken the steps to deposit the rent within time. Accordingly, the Delhi High Court held that it was a fit case where the defence of the tenant should be struck off under Section 15 of the said Act. When the matter came before Hon'ble Supreme Court, it was held by their Lordships of the Supreme Court that the High Court was justified in coming to the conclusion that the tenant firm was negligent and careless because the rent could still be deposited by any other partner, if the attorney had fallen ill or one partner had forgotten the date of deposit. Resultantly, the appeal filed by the tenant against the order of Delhi High Court striking of the defence was affirmed by their Lordships of the Supreme Court. In 1987 (Supp.) SCC 527 (supra), their Lordships of Hon'ble Supreme Court were considering the provisions of Order 15 Rule 5 CPC, which were incorporated in the Code of Civil Procedure for the State of Uttar Pradesh in the year 1972 as re-enacted in the year 1976.

The amended provisions of Order 15 Rule 5 CPC, as applicable to the State of Uttar Pradesh, are in pari-materia with the provisions of Order 15 Rule 5 CPC which have been added by the High Court of Punjab & Haryana, Chandigarh in the year 1991 for the States of Punjab & Haryana and Union Territory of Chandigarh, as referred to above. In 1987 (Supp.) SCC 527 (Supra) it was held by their Lordships of Hon'ble Supreme Court that the tenant having failed to comply with the requirements of Order 15 Rule 5 CPC by not depositing the arrears of rent together with interest, etc., the application filed by landlord for striking off the defence ought to have been allowed and the suit for eviction filed by landlord should have been decreed. Resultantly, the orders passed by the Additional District Judge and the High Court were set-aside and the decree for eviction was passed against the tenant.

(12) In AIR 1981 SC 1657 (Supra) again, their Lordships of the Supreme Court were considering the provisions of Order 15 Rule 5 CPC as incorporated in the State of Uttar Pradesh in the year 1976. It was held by their Lordships that Sub Rule 1 of Rule 5 of Order 15 obliges the defendant to deposit at or before the first date of hearing of the suit, the entire amount admitted by him to be due together with interest and further whether or not he admits any amount to be due, to deposit regularly throughout the continuation of the suit the monthly amount due within a week from the date of its accrual. It was further held by their Lordships that Sub Rule 2 of Rule 5 of Order 15 CPC obliges the court before making an order for striking off the defence to consider any representation made by the defendant in that behalf. In other words, the defendant has been vested with a statutory right to make representation to the court against his defence being struck off. If a representation is made the court must consider it on its merits and then decide whether the defence should or should not be struck off. It was further held by their Lordships that this provision enables the defendant to show by bringing material on record that he has not been guilty of the default alleged, or if the default has occurred, there is good reason for it. It was further held that it is not impossible that the record may itself contain such material already. It was further held by their Lordships that Sub Rule (1) of Rule 5 of Order 15 CPC striking off the defence of the defendant is in the nature of penalty and a serious responsibility rests on the court in the matter and the power is not to be exercised mechanically. There is a reserve of discretion vested in the Court entitling it not to strike off the defence if on the facts and circumstances existing already on record it finds good reason for not doing so. It will always be a matter for the judgment of the court to decide whether on the material before it, notwithstanding the absence of a representation under Sub Rule (2), the defence should or should

not be struck off. The word "may" merely vests power in the court to strike off the defence. It does not oblige it to do so in every case of default. In view of the law laid down by their Lordships of the Supreme Court, in this authority, it would be clear that even in the absence of a representation under Sub-Rule (2), the court still has the discretion to strike off or not to strike off the defence, keeping in view the material already on the record.

(13) AIR 1981 SC 1657 (supra) was relied upon by this Court in 1994(1) Punjab Law Reporter 154 (supra) and it was held that the provisions of Order 15 Rule 5 CPC are not to be mechanically applied.

(14) In 1997 (1) Rent Control Reporter 282 (supra), it was held by a Division Bench of Allahabad High Court that Order 15 Rule 5 CPC has got two limbs. The first limb starts with the words "In any suit by a lessor" and the second limb starts with the words "Whether or not". It was further held that the first limb applies where the defendant would be exonerated from the penalty of striking off his defence, in case he deposits the arrears of rent admitted by him on or before the first date of hearing of the suit together with interest. It was further held that the Second limb of Order 15 Rule 5 CPC postulates that 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 monthly amount due, the court may, subject to the provision of Sub-Rule (2), strike off his defence. It was further held that under Sub Rule (2) the court is required to consider any representation that may be made by the defendant within a specified period in this regard.

(15) In 1994(2) Punjab Law Reporter 219 (supra), it was held by this Court as under :—

"Order 15 Rule 5(1) of the Code of Civil Procedure on its true interpretation can be split into two parts. The first part casts an obligation upon the lessee to make the payment of the entire amount admitted by him to be due together with interest thereon at the rate of 9 per cent per annum on the first date of hearing failing which the Court has the power to strike off the defence of the defendant. The second part envisages a situation where the defendant does not admit any amount to be due but nonetheless an obligation is cast upon him to pay throughout the continuation of the suit such monthly amount which is due within a week from the date of its accrual failing which the Court had got power to strike off the defence. This

view is manifest on the plain reading of second part of the provision which starts with the words '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. The object behind the addition of the aforementioned provision seems to be that no landlord should be deprived of his right to receive the rent and no tenant should be allowed to live in the premises free of charge simply because all sorts of pleas can be taken in the pleadings.'

(16) In Suresh Kumar Versus Prem Chand (8) it was held by this Court that provisions of Sub Rule (1) of Rule 5 are subject to the condition stipulated in Sub Rule (2) which gives a right to the defendant to make a representation within the prescribed time. In other words, a right has been given to a defendant to show that in fact he has not committed any default or that there is a bonafide mistake. The court has a discretion. The court may on consideration of the representation or on the basis of any other material which may already be available on record find that there is no default or that there was good reason for it. In that event, court is not bound to strike off the defence. However, in a case, where it is apparent that a default has been committed by the defendant and no good reason is shown either by making a representation or otherwise from the material on record, the court has the jurisdiction to strike off the defence. It was further held in the said authority that his specific provision has been made apparently with the object of avoiding harassment to a lessor.

(17) In Jai Bhagwan Vs. Chandra Mohan and others (9) after considering the provisions of Order 15 Rule 5 CPC, as incorporated by this Court in the Code of Civil Procedure, it was held by this Court as under :—

“21. The second question which requires determination is as to whether it is mandatory for the Court to strike off the defence of a lessee in every case where the lessee fails to deposit the amount of rent or compensation together with interest, or any discretion vests with the court concerned to extend the time for deposit of the amount of rent etc. No doubt Order XV, Rule 5 (1) in terms does not contain any provision authorising the

(8) 1993 (2) P.L.R. 408

(9) 1995 (3) P.L.R. 191

Court to extend the time for deposit of rent etc. but the very use of the expression may strike off his defence "shows that the rule making authority has reserved discretion with the Court not to strike off the defence if it is satisfied that the defendant was prevented from making deposit of the arrears of rent etc. for good and sufficient reasons. In my opinion, Order XV, Rule 5, merely vests power in the Court to strike off the defence. This means that the Court is not obliged to strike off the defence in each and every case where the defendant defaults in making the deposit of the entire amount together with interest. Moreover, sub rule (2) of rule 5 enables the defendant to make a representation within the stipulated time and the Court is required to consider such a representation before passing an order to strike off the defence. This also shows that in every case the Court is not obliged to strike off the defence. Rather, it is a matter in which the Court has to judiciously consider the representation/request, if any made by the defendant for allowing him time to deposit the rent. In every case the Court has to decide whether on the basis of the material placed before it the defence of the defendant should or should not be struck off. A somewhat similar provision contained in Order XV, Rule 5, as inserted by the U.P. (Civil Laws) Amendment Act, 1972, has been interpreted by the Supreme Court in *Bimal Chand Jain v. Gopal Aggarwal*, AIR 1981 S.C. 1657, The Supreme Court held that the Court has the discretion not to strike off defence if on the facts and circumstances already existing on record there is good reason for not doing so."

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- "29. In view of the above, it must be held that the provision contained in Order 15, Rule 5(1) does not make it obligatory for the Court to strike off the defence in each and every case where the tenant defaults in the deposit of rent or compensation together with interest. The Court is vested with the discretion to strike off the defence or not do so. What the court is required to do is to apply its judicial discretion having regard to the facts of the case and then decide whether it is just and proper to strike off the defence. If an order is passed by the Court striking off defence without due application of mind to the relevant principles governing the exercise of discretion, this Court will have the power under section 115, C.P.C. to interfere with the order passed by the Court."

(18) The present cases are to be considered in the light of the law laid down by their Lordships of Hon'ble Supreme Court, by this Court and by the Allahabad High Court, in various authorities referred to above.

(19) As referred to above, in both the cases, the defendant had neither deposited the arrears of rent admitted by him on the first date of hearing nor he had deposited the monthly rent due during the pendency of the suit, whether or not he was admitting any amount to be due. Merely because the defendant had taken the plea in the Civil Suit filed by Shyam Sunder that there was no relationship of the landlord and the tenant between the parties would not entitle the defendant not to deposit the monthly amount due during the pendency of the suit (even if the defendant had denied the relationship of landlord and tenant between the parties). This is specially so, when prima-facie there is material on the record to show that defendant M/s. Saras Paper Pack had issued two cheques dated 10th October, 1996 and 9th November, 1996 for Rs. 8,000 each in favour of Shyam Arora—plaintiff towards the rent. Photocopies of two cheques for Rs. 8,000 each issued by M/s Saras Paper Pack in favour of Shyam Arora dated 10th October, 1996 and 9th November, 1996 were produced before me at the time of arguments to show prima-facie that M/s. Saras Paper Pack had admitted Shyam Arora to be the landlord and for that reason the cheques in question towards the payment of rent for the building in question were issued.

(20) Similarly, merely because in Civil Suit filed by Smt. Bharti Arora and another the defendant had taken the plea that building in question was more than 10 years old and hence civil court had no jurisdiction to entertain and decide the present suit, by itself, would be no ground for the defendant not to deposit the arrears of rent admitted by him to be due on the first date of hearing and to go on depositing the monthly amount due within a specified period till the decision of the suit. This is specially so, when the defendant had not denied the relationship of landlord and tenant between the parties. Even in this case, the learned counsel appearing for the plaintiff-respondent had produced before me photocopies of two cheques dated 10th October, 1996 and 9th November, 1996 for Rs. 9,500 each in favour of Mrs. Lalita Arora and Bharti Arora, prima facie, to show that M/s. Saras Paper Pack (defendant) had admitted the plaintiffs to be the landlord and had issued the two cheques in their favour towards the payment of rent for the premises in question. The question as to whether the civil court had the jurisdiction or not to entertain and decide the present suit would be considered by the court after the parties have led evidence in support of their respective contentions. Further, that by itself would

not entitle the defendant the arrears of rent admitted by the defendant to be due and not to pay monthly amount due for the subsequent period during the pendency of the suit. By not depositing the arrears of rent admitted by him to be due and by not depositing the monthly amount due for the subsequent period during the pendency of the suit, the defendant had taken a big risk. The defendant must suffer if the defendant fails to show either by making a representation or otherwise from the material already on record that he had not committed any default or that there was a bonafide mistake. If the defendant has failed to satisfy the court in this regard, on the basis of the material already on the record or on the basis of the material that may be brought on the record by the defendant by making a representation under Sub Rule (2) of Rule 5 of Order 15 CPC, the court is competent to strike off the defence of the defendant for non-compliance of the provisions of Order 15 Rule 5 CPC. However, the power of striking off the defence is not to be exercised by the trial court mechanically. The court is required to exercise judicial discretion on the basis of the material already on the record or which may be brought on the record by the defendant by making a representation in this regard, before passing an order striking off or not striking off the defence of the defendant on account of non payment of rent.

(21) In Civil Revision No. 4201 of 1999, a perusal of the order passed by the Trial Court would show that the said suit was filed by the plaintiff against the defendant on 31st March, 1998 and the defendant had first put in appearance before the trial court on 28th September, 1998 on which date the case was adjourned to 3rd November, 1998 for filing written statement. The order striking off the defence was passed by the Ld. Trial Court on 18th May, 1999. Admittedly, by that date the defendant had not deposited the monthly amount due nor he had moved any representation before the trial court seeking extension of time for depositing monthly amount due. Further, there is nothing on the record to show that there was any material on the record before the learned trial court which may be sufficient for the trial court not to strike off the defence for non-payment of monthly amount due. Even after the plaintiff had moved an application under Order 15 Rule 5 CPC for striking off the defence of the defendant, still no representation was made by the defendant under Sub Rule (2) of Rule 5 of Order 15 CPC nor the defendant had brought any other material on the record to show that no case for striking off the defence was made out, except taking the plea in the written reply to the application under Order 15 Rule 5 CPC that there was no relationship of landlord and tenant between the parties.

(22) In Civil Revision No. 4125 of 1999, a perusal of the order passed by the Trial Court would show that the said suit was filed by

the plaintiff against the defendant on 31st March, 1998 and the defendant had first put in appearance before the trial court on 28th September 1998 on which date the case was adjourned to 3rd November 1998 for filing written statement. The order striking off the defence was passed by the Ld. Trial Court on 18th May, 1999. Admittedly, by that date the defendant had not deposited the monthly amount due nor he had moved any representation before the trial court seeking extension of time for depositing monthly amount due. Further, there is nothing on the record to show that there was any material on the record before the learned trial court which may be sufficient for the trial court not to strike off the defence for non-payment of monthly amount due. Even after the plaintiff had moved an application under Order 15 Rule 5 CPC for striking off the defence of the defendant, still no representation was made by the defendant under Sub Rule (2) of Rule 5 of Order 15 CPC nor the defendant had brought any other material on the record to show that no case for striking off the defence was made out, except taking the plea that the building in question was more than 10 years old and as such the civil court has no jurisdiction.

(23) In view of my detailed discussion above, in my opinion, the learned trial court was perfectly justified in striking off the defence of the defendant-petitioner under Order 15 CPC, in both the suits, especially when there was persistent default on the part of the defendant in not paying the monthly amount due during the pendency of the suit.

(24) The learned counsel appearing for the defendant-petitioner at the close of the arguments had submitted that in case it was found by this court that there was liability of the defendant to deposit the monthly amount due during the pendency of the suit, then some time may be given to the defendant-petitioner, in both the cases, to deposit the same with the trial court. However, I am not impressed with this submission of the learned counsel of the petitioner. The law is already in existence since 1991. If the defendant in both the cases had failed to comply with the provision of Order 15 Rule 5 CPC within the specified period and had failed to bring any other material on the record in this regard, the defendant, who is the petitioner in both the Revision Petitions, did so at his own risk and peril. Having done so, in my opinion, the petitioner cannot be allowed any further time to deposit the admitted amount of rent or the monthly amount due, with the trial court, after necessary orders were passed by the trial court to strike off the defence of the defendant. This is especially so, when even before this Court, the defendant petitioner has failed to bring any other material on the record to show that no case for striking off the defence of the defendant was made out in either of the two cases or that any case is made out for

granting more time to the defendant in both the cases to deposit the admitted rent or the monthly amount due. In these circumstances, the defendant would not be entitled to the exercise of discretion in his favour.

(25) For the reasons recorded above, finding no merit in these revisions, both the revisions are dismissed, but with no order as to costs.

S.C.K.

Before G.S. Singhvi & N.K. Sud, JJ.

M/S. UNITED INDIA INSURANCE CO. LTD.,—Appellant

versus

MANJIT KAUR & OTHERS,—Respondents

F.A.O. No. 310 of 2000

8th May, 2000

Motor Vehicles Act, 1988—S. 157—Owner selling vehicle with the policy of insurance—S. 157(2) requires that the purchaser shall apply for the transfer of the policy in his name within 14 days—Purchaser failed to apply for the transfer of the policy in his name—Whether insurer could deny its liability against the claim of a third party only on the ground that intimation envisaged u/s 157(2) had not been given to it—Held, no.

Held that a plain reading of sub section (1) of Section 157 shows that when a vehicle is sold with the insurance policy, the same is deemed to have been transferred to the purchaser. This deeming provision is not subject to any other limitation. It is true that sub section (2) provides that the purchaser shall apply for the transfer of the policy in his name within 14 days to the insurance company but it does not, in any manner, provide that failure to make such application would nullify either the deemed transfer as envisaged under sub-section (1) of Section 157 of the Act or the insurance policy.

(Para 4)

Further held that the appellant-Insurance Company cannot be allowed to deny its liability against the claim of a third party on the ground that intimation envisaged under Sub Section (2) of S. 157 of the Act had not been sent to it by the purchaser.

(Para 7)

R.K. Bashambo, Advocate for the appellant

G.S. Bawa, Advocate for the respondent