



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

CR-3945-2023 (O&M)

Date of Decision : 03.04.2025

Lt. Col. Arun Sharma (Retd.) & Anr ... Petitioner(s)

Versus

Brig. Ashok Kumar Sharma ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vishal Sharma, Advocate for the petitioner.

Mr. Narender Yadav, Advocate for the respondent.

ALKA SARIN, J. (Oral)

1. The present revision petition has been filed challenging the impugned order dated 06.04.2023 (Annexure P-5) striking off the defense of the defendant-petitioner for non-compliance of Order 15 Rule 5 of the Code of Civil Procedure, 1908.

2. Brief facts relevant to the present *lis* are that the plaintiff-respondent herein filed a suit for possession by way of ejectment with recovery of arrears of rent and mesne profits/damages and permanent injunction. In the said suit it was stated that the plaintiff-respondent was owner of residential plot No.461 *admeasuring* 220 square meters, situated in a residential colony known as Sector 45, Gurgaon, Haryana. The said property consists of three floors and the first floor is occupied by the defendant-petitioners and his son and the other two portions are on rent. The defendant-petitioners were inducted as tenants on the first floor vide a lease deed dated 20.09.2013 for a period of 11 months and the defendant-

petitioners agreed to pay a monthly rent of ₹24,500/- per month excluding electricity and water charges. The defendant-petitioners further agreed to pay an amount of ₹49,000/- as security deposit. It was further the averment in the plaint that the tenancy was renewed on 01.09.2014 and the rent was increased to ₹27,000/- per month. The said agreement dated 06.09.2014 was also appended with the plaint. A specific stand taken by the plaintiff-respondent was that the defendant-petitioners had failed to pay the rent from 31.08.2017 and sought to recover the arrears @ ₹27,000/- starting 01.02.2017. In the written statement, in reply to paragraph Nos.4 and 6 where the lease agreements were referred to, there was a simpliciter denial and the paragraphs were stated to be wrong and denied and no specific denial was made in the written statement. It was, however, the stand taken in the written statement that the defendant-petitioners had paid an amount of ₹3,00,000/- in cash to the plaintiff-respondent as earnest money for the purchase of the property in dispute and that the said ₹3,00,000/- was to be adjusted at the time of the sale. In para No.23 of the written statement a stand was taken by the defendant-petitioners that the plaintiff-respondent had failed to adjust the amount of ₹3,00,000/- either in the rent or towards agreement to sell, therefore, until and unless the plaintiff-respondent clarifies his stand qua ₹3,00,000/- taken as advance towards rent or towards the agreement to sell, they were not ready to vacate the property. The issues in the present case were framed on 23.01.2019 and the evidence of the plaintiff-respondent was also closed on 16.02.2021. An application was filed by the plaintiff-respondent under Order 15 Rule 5 read with Section 151 of CPC for striking off the defense of the defendant-petitioners on the ground

that the rent had not been deposited as per the provisions of Order 15 Rule 5 of CPC. Reply was filed to the said application yet again taking the stand that ₹3,00,000/- had been paid as advance for purchasing the property in dispute and that the said amount had not been adjusted. Vide the impugned order the Trial Court allowed the application and the defense of the defendant-petitioners was struck off. Hence, the present revision petition.

3. Learned counsel for the defendant-petitioners has contended that in December 2015 an amount of ₹3,00,000/- was paid as earnest money in cash as the plaintiff-respondent wanted to sell the suit property. It is further the contention that since the said amount was neither adjusted towards the rent nor the sale deed was executed, hence, the order striking off the defense cannot be sustained. It is further the contention of the learned counsel that the Court ought to have assessed the rent due and given an opportunity to the defendant-petitioners to pay the said amount.

4. *Per contra* the learned counsel for the plaintiff-respondent has contended that there is no denial to para Nos.4 and 6 where reference has specifically been made to the lease agreements executed in 2013 and in 2014. The learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **Asha Rani Gupta Vs. Sri Vineet Kumar [2022 (3) RCR (Civil) 540]** to contend that once there is no evidence of payment or deposit of rent by the tenant in favour of the landlord, the defense has rightly been struck off under Order 15 Rule 5 CPC.

5. I have heard the learned counsel for the parties.

6. In the present case the plaintiff-respondent filed a suit for possession by way of ejectment with recovery of arrears of rent and mesne

profits/damages and permanent injunction. Specific averments were made in para Nos.4 and 6 of the plaint with regard to the rent agreement dated 20.09.2013 and rent agreement dated 06.09.2014 which were also appended with the plaint. The said averments were simply denied as being wrong and hence denied in the written statement. There is no specific response to the said paragraphs.

7. It is trite that in the absence of any specific denial in the written statement, the contents of the plaint would be deemed to be admitted. Hon'ble Supreme Court in the case of **Thangam & Anr. Vs. Navamani Ammal [2024 INSC 164 : Civil Appeal No.8935 of 2011 decided on 04.03.2024]** has held as under :

“15. In the absence of para-wise reply to the plaint, it becomes a roving inquiry for the Court to find out as to which line in some paragraph in the plaint is either admitted or denied in the written statement filed, as there is no specific admission or denial with reference to the allegation in different paras.

15.1. Order VIII Rules 3 and 5 CPC clearly provides for specific admission and denial of the pleadings in the plaint. A general or evasive denial is not treated as sufficient. Proviso to Order VIII Rule 5 CPC provides that even the admitted facts may not be treated to be admitted, still in its discretion the Court may require those facts to be proved. This is an exception to the general rule. General rule is that the facts admitted, are not required to be proved.

15.2. The requirement of Order VIII Rules 3 and 5 CPC are specific admission and denial of the pleadings in the plaint. The same would necessarily mean dealing with

the allegations in the plaint para-wise. In the absence thereof, the respondent can always try to read one line from one paragraph and another from different paragraph in the written statement to make out his case of denial of the allegations in the plaint resulting in utter confusion.

15.3. In case, the defendant/respondent wishes to take any preliminary objections, the same can be taken in a separate set of paragraphs specifically so as to enable the plaintiff/ petitioner to respond to the same in the replication/rejoinder, if need be. The additional pleadings can also be raised in the written statement, if required. These facts specifically stated in a set of paragraphs will always give an opportunity to the plaintiff/petitioner to respond to the same. This in turn will enable the Court to properly comprehend the pleadings of the parties instead of digging the facts from the various paragraphs of the plaint and the written statement.

15.4. The issue regarding specific admission and denial of the pleadings was considered by this Court in Badat and Co. Bombay Vs. East India Trading Co. [AIR 1964 SC 538]. While referring to Order VIII Rules 3 to 5 of the CPC it was opined that the aforesaid Rules formed an integrated Code dealing with the manner in which the pleadings are to be dealt with. Relevant parts of para '11' thereof are extracted below:

"11. Order 7 of the Code of Civil Procedure prescribes, among others, that the plaintiff shall give in the plaint the facts constituting the cause of action and when it arose, and the facts showing the court has jurisdiction. The object is to enable the defendant to ascertain from the plaint the

necessary facts so that he may admit or deny them. Order VIII provides for the filing of a written-statement, the particulars to be contained therein and the manner of doing so;

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These three rules form an integrated code dealing with the manner in which allegations of fact in the plaint should be traversed and the legal consequences flowing from its non-compliance. The written statement must deal specifically with each allegation of fact in the plaint and when a defendant denies any such fact, he must not do so evasively, but answer the point of substance. If his denial of a fact is not specific but evasive, the said fact shall be taken to be admitted. In such an event, the admission itself being proof, no other proof is necessary.”

15.5. The matter was further considered by this Court in Lohia Properties (P) Ltd., Tinsukia, Dibrugarh, Assam Vs. Atmaram Kumar [(1993) 4 SCC 6] after the 1976 Amendment Act in CPC whereby the existing Rule 5 of Order VIII of the CPC was numbered as sub-rule (1) and three more sub-rules were added dealing with different situations where no written statement is filed. In paras 14 and 15 of the aforesaid judgment, the position of law as stated earlier was reiterated. The same are extracted below:

"14. What is stated in the above is, what amount to admit a fact on pleading while Rule 3 of Order 8 requires that the defendant must deal specifically with each allegation of fact of which he does not admit the truth.

15. Rule 5 provides that every allegation of fact in

the plaint, if not denied in the written statement shall be taken to be admitted by the defendant. What this rule says is, that any allegation of fact must either be denied specifically or by a necessary implication or there should be at least a statement that the fact is not admitted. If the plea is not taken in that manner, then the allegation shall be taken to be admitted.”

15.6. We have made the aforesaid observations as regularly this Court is faced with the situation where there are no specific para-wise reply given in the written statement/counter affidavit filed by the defendant(s)/respondent(s). In our opinion, if the aforesaid correction is made, it may streamline the working.”

8. The only defense taken by the defendant-petitioners was that they had paid an amount of ₹3,00,000/- as earnest money for the purchase of the property in dispute and the plaintiff-respondent had not clarified whether the said amount had been adjusted towards rent or towards the agreement to sell and in the absence of any clarification, the defendant-petitioners were not ready to vacate the property. After framing of the issues and till the evidence of the plaintiff-respondent was closed, the defendant-petitioners failed to deposit the amount of rent as admitted by them in Court. Once the lease agreements were admitted by the defendant-petitioners as was the relationship of the landlord and the tenant, the defendant-petitioners could have deposited the rent minus ₹3,00,000/-.

9. Order 15 Rule 5 of CPC reads as under :

“State Amendments

Punjab - In Order XV, after rule 4, insert the following rule, namely :

"5. Striking off defence for failure to deposit admitted rent - (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 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, 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 - (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 on 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, that 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.

(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 or any account, the Court may require the plaintiff to furnish the security for such sum before he is allowed to withdraw the same." (w.e.f.13-5-1991)."

10. A perusal of Order 15 Rule 5 CPC specific to Punjab and Haryana makes it clear that if any amount deposited includes any sums claimed by the depositor to be deductible or any account, the Court may require the plaintiff to furnish the security for such amount before he is allowed to withdraw the same. The defendant-petitioners were always at liberty to deposit the amount after deducting ₹3,00,000/- or after bringing it to the notice of the Court that qua ₹3,00,000/-, before the plaintiff-respondent could withdraw the same, he be directed to furnish the security as per the provisions of law.

11. Hon'ble Supreme Court in the case of **Asha Rani Gupta** (supra) has held as under :

“16. In the totality of facts and circumstances, we are clearly of the view that there was absolutely no reason for the High Court to have interfered in the present case, where the Trial Court had struck off the defence after finding that there was no evidence on record to show the payment or deposit of rent in favour of the plaintiff by the defendant-respondent. The Revisional Court had also approved the order of the Trial Court on relevant considerations. Even the High Court did not find the pleas taken by the defendant-respondent to be of bonafide character, particularly when survey number of the shop let out to him was clearly stated in the sale deed executed in favour of the plaintiff. We find it rather intriguing that, despite having not found any cogent reason for which discretion under Rule 5 of Order XV CPC could have been exercised in favour of the defendant-respondent, the High Court, in the last line of paragraph 45 of the order impugned, abruptly stated its conclusion that: ‘yet the defendant/tenant deserves some indulgence’.

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.”

12. This Court before starting to hear the matter, specifically asked the learned counsel for the defendant-petitioners if the defendant-petitioners were still willing to deposit the amount of rent as due. On first call the learned counsel for the defendant-petitioners sought a pass over to get his instructions. On second call, yet again before arguments commenced, another opportunity was given to the learned counsel to consult the defendant-petitioner No.2 who is present in Court as to whether she was still ready and willing to pay the amount. At this stage, the learned counsel for the defendant-petitioners states that defendant-petitioner No.2 was not a party to the agreement and also that she is not ready to pay the rent.

13. The argument of the learned counsel for the defendant-petitioners that the Court ought to have assessed the rent deserves to be rejected as that is a provision under the rent proceedings and not contemplated as per the provisions of Order 15 Rule 5 of CPC. Even otherwise, sufficient opportunities have been given, including before this Court today to defendant-petitioner No.2, to pay the amount due after deducting the amount of ₹3,00,000/- to which the defendant-petitioner No.2 has categorically refused to pay the amount. In view thereof, no fault can be found with the impugned order passed by the Trial Court.

14. In view of the above, I do not find any merit in the present revision petition. The same being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

15. The Trial Court shall now proceed with the matter in accordance with law. Let a copy of this order be conveyed to the Court concerned.

16. It is made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

03.04.2025
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO