2025:PHHC:134890

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-1545-2025 (O&M)
Reserved on: 22.08.2025
Pronounced on: 25.09.2025

M/s Spazeclub Pvt. Ltd. and another ...Petitioners

Versus

M/s Venus Cotspin Pvt. Ltd. and another ...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Argued by: Ms. Mehak Kalra, Advocate,
Mr. Nitesh Jhajhria, Advocate,
Mr. Vipul Sharma, Advocate and
Mr. Bhuvi Khatri, Advocate, for the petitioners.

Mr. Ramandeep Singh Gill, Advocate and
Mr. Manroop Singh Randhawa, Advocate,
for the respondents.

VIKRAM AGGARWAL, J

The instant revision petition, preferred under Article 227 of the Constitution of India, assails the order dated 07.12.2024 (Annexure P.22) passed by the Commercial Court, Gurugram (hereinafter referred to as `the Commercial Court'), vide which an application preferred by the respondent-plaintiffs under Order 15 Rule 5 of the Code of Civil Procedure (for short `the CPC') was disposed of with a direction to the petitioner-defendants to pay a sum of Rs.1,43,21,475/- within a period of one month. Challenge has also been laid to order dated

15.01.2025 (Annexure P.23), vide which the defence of the petitioner-defendants was struck off.

2. The facts, as emanating from the revision petition, are that respondent No.1-M/s Venus Cotspin Pvt. Ltd., is the owner of property bearing plot No. 530, Udyog Vihar Phase-V, Gurugram (hereinafter referred to as `the suit property'). Respondent No.1 is stated to have raised construction over the suit property consisting of a basement and four floors (ground, first, second and third floors) apart from machine(s) room etc. A lease deed dated 07.03.2018 (Annexure P.2) was executed between the respondent-plaintiffs and the petitioner-defendants vide which the suit property was leased out to the petitioner-defendants for a period of five years i.e., from 07.03.2018 to 06.03.2023. The lease amount was fixed at Rs.8,50,000/- per month and the payment of lease money was to commence on 01.04.2018.

3. An addendum to the lease deed was executed on 11.09.2019 (Annexure P.3) vide which the lease amount was modified to Rs.6,50,000/- from Rs.8,50,000/- per month. A rectification deed dated 26.12.2019 (Annexure P.4) was also executed giving right to the petitioner-defendants to sublet the demised premises.

4. Since the lease period was to end on 06.03.2023, parties are stated to have executed a document (Annexure P.5) with regard to a new lease agreement, which was to commence from 01.04.2023 and was to continue till 31.03.2028. The rent is said to have been fixed at Rs.6,50,000/- per month plus GST.

There were other terms and conditions, including a clause that except for air conditioning; carpet and miscellaneous work, the remaining renovation expenses, would be borne by the petitioner-defendants.

5. It appears that certain differences cropped up between the parties, as a result of which, certain communications ensued. The petitioner-defendants claimed that they had spent a huge amount of Rs. One crore on renovation, whereas the respondent-plaintiffs, alleging non-compliance of the terms and conditions of the lease deed, including non-payment of lease amount, did not want to proceed ahead.

6. Legal notice dated 03.04.2023 (Annexure P.8) was issued by the respondent-plaintiffs terminating the lease and calling upon the petitioner-defendants to pay the lease amount and to remove all their belongings from the suit property.

7. Reply dated 08.04.2023 (Annexure P.9) was given in which, the claim of Rs. One crore having been spent on renovation, was raised. Rejoinder dated 12.04.2023 to the reply (Annexure P.10) was issued refuting the aforesaid claim leading to issuance of another reply to the rejoinder (Annexure P.11).

8. Finally, a suit for recovery of Rs.1,17,52,263/- (Annexure P.15) was instituted by the petitioner-defendants against the respondent-plaintiffs.

9. The respondent-plaintiffs instituted a suit for possession and recovery of lease charges; mesne profits and damages as also permanent and mandatory injunction against the petitioner-defendants (Annexure P.17). They sought

possession of the suit property along with permanent injunction restraining the petitioner-defendants from creating third party rights in the same. Mandatory injunction directing the petitioner-defendants not to demolish/damage the suit property or any part thereof and to give details of expenditure, was also prayed for. Recovery of the balance lease amount of Rs.52 lakhs along with interest @ 18% per annum; recovery of lease amount for March, 2023 and payment of mesne profits w.e.f. April, 2023 to July, 2023 amounting to Rs.42 lakhs @ Rs.10,50,000/- per month along with interest @ 18% p.a. along with future damages, were sought.

10. During the pendency of the said suit, various applications were initiated by the petitioner-defendants, including an application under Order 7 Rule 11 CPC (Annexure P.18) for rejection of the plaint, which was resisted by way of reply (Annexure P.19) and an application under Order 7 Rule 10 CPC.

11. Notably, the application under Order 7 Rule 11 CPC was dismissed by the Commercial Court, vide order dated 25.07.2024 (Annexure P.29). The petitioner-defendants filed CR-5411-2024 against the said order, which was also dismissed by a Coordinate Bench vide order dated 18.09.2024 (Annexure P.30). The application under Order 7 Rule 10 CPC was also dismissed by the Commercial Court on 05.11.2024 (Annexure P.31).

12. The respondent-plaintiffs also instituted an application under Order 15 Rule 5 CPC (Annexure P.20) for

striking off the defence of the petitioner-defendants for failure to deposit the admitted rent. It was averred that the lease deed (Annexure P.1) had expired on 06.03.2023 after which, petitioner-defendant No.1 became an unauthorized occupant of the suit property and since that date, not even a single penny had been paid towards the lease amount or user charges.

13. Keeping in view the enhancement clause in the lease deed, a prayer was made seeking a direction to the petitioner-defendants to deposit the lease amount @ Rs.7,90,080/- along with interest @ 9% w.e.f. March, 2023. The application was opposed by way of a reply (Annexure P.21) stating that the suit was a counter attack by the respondent-plaintiffs to the suit for recovery filed by the petitioner-defendants. The stand taken again was regarding the amount spent on the renovation of the suit property. Dismissal of the application was, therefore, prayed for.

14. Vide order dated 07.12.2024 (Annexure P.22), the petitioner-defendants were called upon to deposit rent for 21 months i.e., from March, 2023 to November, 2024 @ Rs.6,30,000/- per month amounting to Rs.1,32,30,000/- along with interest @ 9% per annum amounting to Rs.10,91,475/-. The total amount, therefore, the petitioner-defendants were called upon to pay within a period of one month, was Rs.1,43,21,475/-. The case was adjourned to 15.01.2025. On 15.01.2025, counsel for the petitioner-defendants gave a statement that he had no instructions to pursue the suit and prayed that notice be issued to the petitioner-defendants. This

request was declined by the Commercial Court. Under the circumstances, the petitioner-defendants were proceeded against *ex-parte* and their defence was struck off, leading to the filing of the instant revision petition.

15. Another application under Order 38 Rules 1 and 5 CPC (Annexure P.24) had been moved by the respondent-plaintiffs for attachment before judgment. Vide order dated 03.02.2025 (Annexure P.26), an interim order of attachment of the premises in possession of the respondent-defendants was passed, which led to the filing of CR-970-2025 titled as M/s Spazeclub Pvt. Ltd. and another Vs. M/s Venus Cotspin Pvt. Ltd. and another. The present revision petition was filed subsequently. The reference of CR-970-2025 is being given since both the revision petitions were being heard together, but subsequently, CR-970-2025 was disposed of as having been rendered infructuous vide order dated 22.08.2025 since there had been a final decision on the application under Order 38 Rules 1 & 5 CPC. The proceedings, which took place in the said revision petition may also be relevant for the purpose of the decision of the instant revision petition and reference to those proceedings shall be made at the appropriate stage.

16. Learned counsel for the parties were heard.

17. It was strenuously urged by learned counsel for the petitioners that the Commercial Court has gravely erred in calling upon the petitioner-defendants to pay the lease money along with interest amounting to Rs.1,43,21,475/-. Learned counsel, while referring to the agreement Annexure P.5,

submitted that a sum of Rs. One crore had been spent by the petitioner-defendants on the renovation of the demised premises and that under the circumstances, the said amount was required to be adjusted before any assessment of the amount due to be paid by the petitioner-defendants was made.

18. It was submitted that the Commercial Court had not examined the matter from the correct perspective. It was submitted that when counsel for the petitioner-defendants had made a statement that he had no instructions from the petitioner-defendants, the Commercial Court should have issued a notice to the petitioner-defendants instead of proceeding against them *ex-parte* and striking off their defence. Learned counsel submitted that the said orders, being grossly illegal, are not sustainable.

19. Learned counsel also submitted that subsequently, vide order dated 30.04.2025 (Annexure P.34), an application under Order 9 Rule 9 CPC moved by the petitioner-defendants had been allowed and the suit for recovery dismissed in default on 15.01.2025, had been restored.

20. It was, therefore, submitted by learned counsel that the impugned orders are not sustainable. In support of his contentions, reliance was placed upon the judgments of the Supreme Court in **Bimal Chand Jain Vs. Gopal Agarwal,** 1981 AIR SC 1657; **S.P. Changalvaraya Naidu (dead) by LRs Vs. Jagannath (dead) by LRs.,** (1994)1 SCC page 1 and the judgment of Delhi High Court in **Satish Khosla Vs. Eli Lilly**

Ranbaxy Ltd. and others, Crl. CP 8 of 1997 & FAO(OS) 50 of 1997 decided on 12.12.1997.

21. *Per Contra*, learned counsel for the respondent-plaintiffs submitted that there was no illegality in the impugned order. Reference was made to the orders passed in CR-970-2025 and it was submitted that the conduct of the petitioner-defendants does not entitle them for any relief. It was submitted that no illegality had been committed by the Commercial Court in proceeding *ex-parte* against the petitioner-defendants and striking off their defence. In support of his contentions, reliance was placed upon the judgments of the Supreme Court in **Ramjas Foundation and another Vs. Union of India and others,** (2010)14 SCC 38 and a decision of this Court in Civil Revision No. 932-2022 – **M/s Beli Ram Sareen and another Vs. Santosh Gosain,** decided on 29.04.2025.

22. Learned counsel also referred to all the documents placed on record as also the sequence of events leading to the passing of the impugned order.

23. I have considered the submissions made by learned counsel for the parties.

24. Before adverting to the merits of the case, it would be essential to refer to the statutory provisions. Order 15 Rule 5 CPC (as it applies to the States of Punjab and Haryana), reads as under:-

> "**Punjab**- Order XV, after rule 4, insert the following rule namely:-
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> "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 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 the 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. The expression "monthly amount due" means the amount due every month, whether as rent of 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, 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.
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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:
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> 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."

25. Reverting to the facts of the case, the factum of execution of the lease deed, the addendum, the rectification deed as also agreement executed on 15.02.2023 is admitted. The lease amount was Rs.6,50,000/- per month. The dispute is as regards the terms and conditions of the agreement dated 15.02.2023. There is no recital in the said agreement that the renovation was to be done by the petitioner-defendants before the execution of the lease deed. In any case, it would be a matter of evidence and such claim could be decided only at the final stage. The provisions of Order 15 Rule 5 CPC clearly lay down that admitted rent has to be paid and only deduction is to be made qua tax etc., meaning thereby that the petitioner-defendants were bound to pay the admitted rent and the amount

claimed to have been spent by them would have been adjustable only at the final stage, if so proved by the petitioner-defendants.

26. The conduct of the petitioners has also been far from satisfactory. In the application moved under Order 15 Rule 5 CPC, which was duly opposed by them, a direction was issued vide order dated 07.12.2024 calling upon the petitioner-defendants to pay a sum of Rs1,43,21,475/- within a period of one month. When the date came i.e., 15.01.2025, their counsel made a statement that he had no instructions. This was clearly an attempt to delay the proceedings. No doubt, after if a counsel makes a statement that he has no instructions, ordinarily the Court would issue fresh notice to the party. However, here the date was fixed only one month after the previous date and even if counsel had no instructions, the petitioner-defendants were duty bound to put in appearance before the Court through some other counsel or through their authorized representative. The intention becomes clear from another fact. The application under Order 9 Rule 9 CPC moved for restoration of the suit for recovery by the petitioner-defendants and the application for setting aside the order vide which the petitioner-defendants had been proceeded against *ex-parte* in the present suit, were filed by the same counsel, who had given a statement that he had no instructions. It is, therefore, manifestly clear that the said statement had been given only with a view to buy time. The Commercial Court, considering the attempt of the petitioner-defendants to delay the proceedings, dealt with the matter from

the correct perspective and rightly proceeded against them *ex-parte* and struck off their defence.

27. At this stage, this Court is reminded of a Full Bench decision in **Anand Parkash** Vs. **Bharat Bhushan Rai and another,** 1981 AIR (Punjab and Haryana) 269, wherein it was held that when costs had been imposed and the matter had been adjourned for payment of costs, then on failure by the party to pay the costs, the Court would disallow the prosecution of the suit or defence as the case may be:-

> "In accordance with the majority decision it is held that in the event of the party failing to pay the costs on the date next following the date of the order imposing costs, it is mandatory on the Court to disallow the prosecution of the suit or the defence, as the case may be and that no other extraneous consideration would weigh with the Court in exercising its jurisdiction against the delinquent party. However, where the costs are not paid as a result of the circumstances beyond the control of the defaulting party then the court will be well within its jurisdiction to exercise its power under section 148 of the Code in favour of the defaulting party if a strong case is made out for the exercise of such jurisdiction. 24. The revision petition is allowed and the order of the trial Court dated 6th September, 1978, is set aside and the defendants are debarred from prosecuting the defence any further. In the circumstances of the case the parties to bear their own costs. 25. The parties through their learned counsel have been directed to appear before the trial Court on 20th July, 1981."

28. In the instant case, despite a specific order having been passed for payment of a specific amount by a specific date, the same was not paid and an attempt was made to delay the proceedings by setting up a false plea. Under these circumstances, the Commercial Court was fully justified in striking off the defence of the petitioner-defendants. The judgment in the case of the Full Bench in **Anand Parkash's** case (supra), would also be fully applicable in the present case, though the said judgment pertains to payment of costs. Still further, here it was not only payment of costs, but the entire lease money along with interest. Still further, even in terms of the provisions of Order 15 Rule 5 CPC, the defence is to be struck off, if the admitted rent is not paid.

29. Another thing which needs to be noticed here is that when the order dated 03.02.2025 was passed ordering interim attachment upon an application having been moved by the plaintiff-respondents, the petitioner-defendants instituted CR-970-2025 assailing the said order. Notably, at that time, the petitioner-defendants did not assail the order dated 15.01.2025 vide which their defence had been struck off, though the said order was subsequently assailed in the instant revision petition. In the said revision petition (*ibid*), an order dated 17.02.2025 was passed by this Court, calling upon the petitioner-defendants to deposit Rs.50 lakhs with the Commercial Court within a period of four weeks and operation of the impugned order therein was stayed, subject to deposit of the said amount. The intent behind passing the said order was to test the *bona-fides* of

the petitioner-defendants since they were claiming that they had spent Rs. One crore on renovation. Even the balance amount after deduction of the said amount would be at least Rs.50 lakhs. However, the said order was not complied with and no amount was deposited. Eventually, order dated 07.05.2025 was passed, wherein it was observed that since Rs.50 lakhs had not been deposited, the stay would cease to operate. Orders dated 17.02.2025 and 07.05.2025 passed by this Court, read as under:-

> **"Order dated 17.02.2025**
>
> Learned counsel for the petitioners inter alia submits that once a suit for recovery filed by the petitioner was pending, proceedings under Order 38 Rules 1 and 5 CPC could not have been initiated. He further submits that the Commercial Court, Gurugram proceeded in a manner unknown to law and passed an interim order, thereby attaching the property and articles in possession of the petitioners.
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> In support of his contentions, learned counsel for the petitioners has placed reliance upon a judgment of the Division Bench of this Court in the case of **Nirmal Textiles Pvt. Ltd. vs. Yaskawa India Pvt. Ltd. and another, 2023 NCPHHC 126817 (Law Finder Doc Id # 2472356).**
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> Notice of motion.
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> Mr. Gaurav Datta, Advocate accepts notice on behalf of respondent No.1/caveator. He submits that there is no illegality in the order and that keeping in view the conduct of the petitioners since they failed to pay the outstanding amount in terms of the order dated 07.12.2024, the impugned order was passed by the

Commercial Court, Gurugram. He, however, prays for some time to address arguments.

List on 22.03.2025.

In the meantime, on deposit of Rs.50 lakhs with the Commercial Court, Gurugram, within a period of four weeks from today, which shall be liable to be released to respondent No.1, the operation of the impugned order shall remain stayed."

Order dated 07.05.2025

On request, adjourned to 11.08.2025 for arguments.

It is clarified that since concededly, the sum of Rs.50,00,000/- in terms of order dated 17.02.2025 was not deposited, the interim order dated 17.02.2025 is no longer in operation.

A photocopy of this order be placed on the file of connected case."

30. The aforementioned facts and circumstances clearly show that the Commercial Court, committed no illegality in passing the order dated 15.01.2025.

31. I have gone through the judgments relied upon by learned counsel for the parties. In **Bimal Chand Jain's** case (supra), the Supreme Court held that an order under Order 15 Rule 5 CPC is in the nature of penalty and Courts should not exercise such power mechanically. There is no quarrel with the aforesaid proposition. However, the aforesaid judgment was passed on different facts, whereas the impugned orders have been passed totally on different facts, which have been discussed in the preceding paragraphs.

32. The judgment in **S.P. Changalvaraya Naidu's** case (supra), deals with a fraud having been played upon the Court, which is not the case here, as a result of which, the said judgment is not applicable.

33. The judgment of the Delhi High Court in **Satish Khosla's** *case* (supra), deals with a totally different proposition and has no applicability to the facts of the present case.

34. In CR-932-2022 – M/s Beli Ram Sareen and another Vs. Santosh Gosain, decided on 29.04.2025, this Court, has taken a similar view, as has been taken in the instant revision petition. SLP (Civil) Diary No.43452-2025 titled as Santosh Gosain Vs. M/s Beli Ram Sareen and another, against the said order was dismissed by the Supreme Court vide order dated 22.08.2025.

35. In view of the aforementioned facts and circumstances, I do not find any merit in the present revision petition and same is, accordingly, dismissed.

Pending application(s), if any, also stands disposed of.

(VIKRAM AGGARWAL)
JUDGE

25.09.2025
ds

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No