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**SooperKanoon Citation : [sooperkanoon.com/1072434](http://sooperkanoon.com/1072434)**

**Court : Punjab and Haryana**

**Decided On : Feb-15-2013**

**Appellant : Jurisdiction Vested in It in Declining to Interfere with the Order of**

**Respondent : Kamakshya Singh Deo Air**

**Judgement :**

Rs.No.1407 o

1. IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

Rs.No.1407 of 2010 (O&M) Date of decision: February 15, 2013 Baldev ...Appellant Versus Ram Singh ...Respondent CORAM: HON'BLE Mr.JUSTICE RAJAN GUPTA Present: Mr.Lokesh Sinhal, Advocate for the appellant.

Mr.Sanjay Vij, Advocate for the respondent.

**Rajan Gupta, J.**

Plaintiff Pushpa Devi filed a suit for possession by way of eviction and recovery of arrears of rent.

During the proceedings, trial court directed that defendant shall tender the rent in the court on 7th of every month.

Defendant complied with this order and tendered the rent from 1st January, 2001 to August, 2006.

He, however, defaulted in payment in the month of September, 2006.

An application was moved by the plaintiff to strike of the defence of the defendant and for order of eviction.

Defendant contested the application submitting that his counsel has not informed of the operative portion of the order.

Thus, he had been unable to deposit rent for the month of September, 2006 within time.

This plea was rejected by the trial court observing that had defendant not been aware of order dated 1.6.2006, he would not have tendered the rent in the month of August well within time.

Thus, his plea was not genuine.

Invoking order 5 Rule 15 CPC, it struck off the defence of the defendant and directed his eviction.

Decree for recovery of arrears was also passed Rs.No.1407 o

2. in favour of plaintiff.

Defendant/tenant challenged the order passed by the trial court before the Additional District Judge, Nuh.

The appeal was, however, dismissed.

Aggrieved, he has filed second appeal before this court.

Learned counsel for the appellant has mainly argued that for non-payment of rent trial court could have struck off his defence but could not have simultaneously ordered his eviction.

He has relied upon judgment reported as Modula India versus Kamakshya Singh Deo, AIR 198.Supreme Court 162.

The plea has been opposed by the counsel for respondent/ landlord.

He has submitted that after defence was struck off, there was no option for the court but to order eviction of the tenant.

He has relied upon judgment of the apex court reported as Anandi Devi versus Om Prakash, 1987 (Supp) Supreme Court Cases 527.

I find merit in the plea of the respondent.

In judgment reported as Modula India's case (supra).the apex court was seized of a matter pertaining to West Bengal Premises Tenancy Act, 1956.

The provisions of West Bengal Premises Tenancy Act, 1956 are not pari materia with East Punjab Urban Rent Restriction Act.

This apart, in said judgment defendant was only given limited right to cross-examine plaintiff's witnesses with a limited objective of pointing out falsity or weakness in plaintiff's case.

Defendant was not granted any right beyond this.

In a later judgment, however, i.e.Anandi Devi's case (supra).apex court has held as follows:- In this appeal, the High Court has failed to exercise the Rs.No.1407 o

3. jurisdiction vested in it in declining to interfere with the order of FiRs.Additional District Judge, Ballia without disclosing any reason.

The learned Additional District Judge disallowed the prayer for eviction made by the appellant in her application under Section 20 (2) (a) of the U.P.Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U.P.Act 13 of 1972) in spite of his having come to the conclusion that the deposit of arrears of rent, which had fallen due from January 27, 1972 up to August 26, 1972, made by the respondent-defendant, was not a valid deposit under Section 13 (2) of the Act.

The learned Additional District Judge has failed to appreciate that the respondent having failed to comply with the requirements of Order 15, Rule 5 of the Code of Civil Procedure, 1908 by not making a deposit of arrears of rent together with interest and costs, the appellant's application for striking off the defence ought to have been allowed and thereafter the suit for eviction should have been decreed under Section 22 (a) of the Act.

In this view, the judgment and order of the High Court as well as that of the learned District Judge cannot be sustained.

We accordingly set aside those judgments, allow this appeal and grant a decree for eviction under Section 20 (2) (a) of the Act.

The decree for arrears of rent passed by the learned Additional District Judge shall, however, stand.

The respondent is given four months' time to vacate and surrender the premises subject to his filing the usual undertaking in this Court within four weeks from today.

No costs.

In view of ratio of aforesaid judgment, I am of the considered view that both the courts below have acted according to law.

No other substantial question of law arises.

No ground for interference in second appeal is, thus, made out.

Dismissed.

(RAJAN GUPTA) JUDGE February 15, 2013 'rajpal'

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