

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT JAMMU**

**CR No. 32/2023
CR No. 27/2023
CR No. 28/2023
CR. No. 33/2023**

Reserved on 19.11.2024
Pronounced on 29 .11.2024

Jatinder Koul

...petitioner(s)

Through: - Mr Sahil Koul Advocate.

Vs.

Ajay Mahajan and others

...respondents

Through: -Mr. Kulwant Singh Johal Sr.
Advocate with Mr. S.S.Johal Advocate

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1 By this common judgment, the afore-titled (04) civil revision petitions filed by the petitioner/defendant, are proposed to be disposed of.

2 It appears that the respondents/plaintiffs filed two suits for ejectment and recovery of arrears of rent against the petitioner/defendant before the Court of learned 1st Additional District Judge, Jammu.('trial Court' for short). The subject matter of one suit is a shop and cabin, along with space for a telephone booth, located on the ground floor of a House situated at 32 A/C Gandhi Nagar, Jammu,

while as the subject matter of the other suit is a room on the first floor of the aforementioned house.

3 As per the case of the plaintiffs/respondents, two different lease deeds came to be executed by their predecessor-in-interest Smt. Purnima Mahajan on 11.10.2013 whereby the aforesaid two portions of the House situated at 32 A/C Gandhi Nagar, Jammu were leased out to the petitioner/defendant for a period of (11) months on a monthly rent of Rs.10,370/- in respect of each of the two demised portions subject to enhancement of rent by 10% every year. In both the lease deeds, it was provided that if there is default in payment of the rent, a further interest at the rate of 20% would be charged for the period for which the rent is not paid. It has been pleaded by the respondents/plaintiffs that Smt. Purnima Mahajan died on 31.10.2017 and after her death, the aforesaid two portions of the demised premises have devolved upon the respondents/plaintiffs, who are sons and daughters of Smt. Purnima Mahajan. It has been further pleaded that the petitioner/defendant has not paid the rent after October, 2016, though he had accepted the plaintiffs as his landlords after the death of their mother. Thus, according to the plaintiffs, the defendant is not only liable to pay enhanced rent at the rate 10% per annum w.e.f September 2014, but he is liable to pay interest at the rate of 20% per annum. It is claimed by the plaintiffs that the defendant is liable to pay an amount of Rs.9,49,495/- in respect of each of the demised premises as arrears of rent till 07.02.2020. The plaintiffs have also pleaded that they have terminated the tenancy of the defendant by serving a legal notice under

Section 106 of the Transfer of Property Act upon the defendant which has resulted in termination of tenancy from midnight between 07.02.2020 and 08.02.2020, or from any other date the defendant considered the tenancy month to expire. It has been claimed by the plaintiffs that the termination of tenancy in each of the demised premises was effected through legal notice dated 28.12.2019 and he was called upon to vacate and hand over the vacant possession of the demised premises to plaintiffs, which he has failed to do.

4 On the basis of the aforesaid pleadings, the plaintiffs have claimed recovery of arrears of rent in the amount of Rs.9,49,495/- and Rs.60,000 for the months of February & March, 2020 for unauthorised use and occupation of the premises by the defendant, making a total amount of Rs.10,09,495/- along with interest at the rate of 12% per annum, besides seeking a decree for ejectment of the defendant from the two demised premises.

5 The petitioner/defendant contested the suit, by filing his written statements in both the suits. In the written statements filed by the defendant, it has been pleaded that the requirement of the plaintiffs is not *bona fide*. It has been submitted that the plaintiffs are already owning residential as well as commercial properties and they are running their own businesses. According to the defendant/petitioner, plaintiff No.1 is a permanent resident of United States of America and is well settled over there. Similarly, plaintiffs No.2 & 3 live in Mumbai and have no requirement of the premises. Regarding plaintiff No.4, it is being pleaded that she is a well settled doctor and owns a palatial

House bearing No. 35 A/C Gandhi Nagar, Jammu and she is also running a medical clinic.

6 It has been further pleaded that the defendant has not violated any condition of the Agreement of Tenancy, as such, the plaintiffs cannot seek his eviction from the demised premises. According to the defendant, he is in possession of the suit premises since the year 1995 and has been paying rent regularly. It is being pleaded that the defendant has, after the death of original landlord, been paying rent to mother of the plaintiffs. It has been pleaded that the defendant has been paying rent in cash to father of the plaintiffs and thereafter their mother. It has been further pleaded that after the death of mother of the plaintiffs, the defendant has paid the rent to plaintiff No.4 who holds a power of attorney on behalf of other plaintiffs in the same manner in which he was paying it to their parents. It has been claimed by the defendant that he has never defaulted in payment of rent. The defendant has also disputed the rate of rent fixed for the two premises and claimed that a total rent of Rs.10,370 per month was fixed for both the premises. The defendant has denied having received the notice regarding termination of tenancy. It has been contended that after outbreak of Covid-19, the plaintiffs refused to take the rent since April 2020. According to the defendant, he had even requested the plaintiffs that he will deposit the rent with the Bank, if they provide the account details, but the plaintiffs plainly refused to do so. Thus, according to the defendant, he is not in default of payment of rent. The

defendant has admitted that he is in arrears of rent from March 2020 onwards.

7 It seems that during pendency of the two suits, several applications came to be filed by the parties in each of the two suits. The petitioner/defendant filed an application under Section 94 (e) read with Section 151 of CPC, with a prayer to keep the proceedings in the two main suits in abeyance till final disposal of his objections filed against the General Power of Attorney dated 10.10.2013 and his application filed by him under Order VII Rule XI CPC. The other application which was filed by the defendant was one under Order VII Rule XI of CPC seeking rejection of the plaint. The third application filed by the defendant was under Section 35-A of CPC seeking compensatory costs against the plaintiffs. One application also came to be filed by the plaintiffs for directing the defendant to pay an amount of Rs.9,49,494 as arrears of outstanding rent with interest @ 12 per annum w.e.f October 2016 till 07.02.2019 with a prayer that in case the same is not done, the defence of the defendant be struck off. The aforesaid applications were filed by the plaintiffs in each of the two suits.

8 The learned trial Court, vide its impugned order dated 27.05.2023, decided all the aforesaid applications by a common order whereby the applications filed by the defendant were rejected and the application filed by the plaintiffs for recovery of rent was allowed and the defendant was directed to deposit the rent of Rs.9,49,494 in the Court within 15 days. Two separate revision petitions have been filed

by the defendant for assailing these directions by way of Revision Petitions No. 27/2023 and 28/2023.

9 When the defendant failed to deposit the arrears of rent in terms of the impugned order, he moved two separate applications under Section 148 of CPC before the trial Court seeking extension of time for compliance of order dated 27.05.2023. Both these applications were rejected by the trial Court by way of two separate orders, pronounced on 15.06.2023 and the defence of the defendant has been directed to be struck off. These two orders dated 15.06.2023 passed by the trial Court in the two suits are subject matter of Revision Petitions bearing Nos. 32/2023 and 33/ 2023.

10 The petitioner/defendant has challenged the impugned orders on the ground that the same have been passed by the trial Court without application of mind. It has been contended that the plaintiffs, who are legal heirs of the original landlady, Smt. Purnima Mahajan, are not entitled to claim arrears of rent, unless they obtain a succession certificate. It has been further contended that the defendant has specifically pleaded in the written statement that he has paid the rent upto March, 2020, as such, it was not open to the learned trial Court to direct the recovery of arrears of rent claimed by the plaintiffs without determining the issue as to whether or not the rent was actually paid by the defendant. It has also been contended that the claim of the plaintiffs on account of arrears of rent is barred by limitation and that they cannot seek recovery of pending arrears of rent beyond three years. It has been further contended that an order under Section 12(4) of the Jammu and

Kashmir Houses and Shops Rent Control Act ('the Rent Control Act' for short) could not have been passed by the trial Court, because, after the promulgation of the Jammu and Kashmir Reorganization Act, 2019 ('the Act of 2019' for short), the Rent Control Act ceased to have application and the present suits have been filed after the promulgation of the Act of 2019. It has been contended that the learned trial Court has failed to appreciate that both the suits of the plaintiffs were barred by limitation, as also by Order II, Rule II CPC and, as such, the plaints deserve to be rejected. It has been further contended that even otherwise, the provisions contained in Section 12(4) of the Rent Control Act are not mandatory in nature and, therefore, the learned trial Court could not have passed the order regarding striking off defence of the defendant.

11 I have heard learned counsel for the parties and perused record of the case including record of the trial Court.

12 In the first instance, let me advert to the applications of defendant, that were dismissed by the trial Court in terms of order dated 27.05.2023. In the first application under Section 94(e) read with Section 151 of CPC, the defendant had sought a direction that the proceedings in the two suits be deferred till his objections against the General Power of Attorney dated 10.10.2013 and the application under Order VII Rule XI of CPC are decided. The applications appear to be frivolous in nature because the question whether the General Power of Attorney dated 10.10.2013, executed by Smt. Purnima Mahajan in favour of Smt. Bela Mahajan, is hardly of any significance for

determining the issues involved in the suits. The objection of the defendant is that the said Power of Attorney is not registered. On the strength of the said Power of Attorney, Smt. Bela Mahajan was authorised to enter into Rent Agreement with the defendant. It was not required to be compulsorily registered, therefore, the objection taken by the defendant is absolutely frivolous and has been rightly rejected by the trial Court.

13 Similarly, the objection of the defendant that the proceedings in the suits should be deferred till his application under Order VII, Rule XI of CPC is decided, is also without any merit. Once the defendant filed his written statement and raised contentions which he has raised in the application under Order VII, Rule XI Rule 7, the same were required to be decided after framing of the issues. If at all, the defendant had raised any preliminary objection with regard to maintainability of the suits in his written statements, the same can be decided in the first instance by the trial Court after striking out the issues. Instead of waiting for the same, the defendant filed a frivolous application under Order VII, Rule XI CPC just to delay the proceedings. In the said application, the defendant raised issues with regard to maintainability of the suits on account of bar of limitation and on account of the bar under Order II, Rule II CPC. Both these contentions were urged by the defendant in his written statements filed in the two suits. Therefore, there was hardly any need for the defendant to file a separate application for rejection of the plaints. It is to be borne in mind that, at the time of deciding an application under Order VII,

Rule XII CPC, the Court is obliged to consider only the averments made in the plaint and the documents annexed thereto. The defence of the defendant is not to be taken into account at the time of deciding an application under Order VII, Rule XI of CPC. Thus, the plaints could not have been rejected on the basis of the defences taken by the defendant/petitioner in his written statements.

14 Even otherwise, from a bare perusal of the averments made in the plaints, it can, by no stretch of imagination, be stated that the same are eligible to be rejected for being barred by any law. The objection relating to bar of limitation and the objection relating to the bar under Order II Rule II CPC, which has been pleaded by the defendant in his written statements, can be looked into by the trial Court after framing of issues. Therefore, no fault can be found in the order impugned passed by the trial Court to the extent of rejection of application of the defendant under Order VII Rule XI CPC.

15 The third application made by the defendant under Section 35-A of CPC claiming costs on the ground that the contention of the plaintiffs that the written statements filed by the defendant could not be taken on record was rejected by the Court in terms of order dated 09.10.2023, is also absolutely frivolous. Vide the aforesaid order, the trial Court had taken the written statements filed by the defendant on record and had overruled the objection of the plaintiffs on the ground that on account of directions passed by the Supreme Court in the case of **cognizance for extension of Limitation (Suo Motu Writ Petition (C) No.3/2020)**, certain period had to be excluded while computing the

statutory period specified for filing the written statements. The plaintiffs/respondents were well within their rights to raise an objection with regard to taking of the written statements on record, as the same had been filed beyond the period prescribed under Order VIII, Rule 1 of the CPC. Merely because the said objection of the plaintiffs was rejected by the trial Court, does not give a cause to the defendant to seek compensatory costs from the plaintiffs. The learned trial Court has rightly rejected the applications of the petitioner/defendant and no interference is called for by this Court to this extent.

16 The main focus of the arguments advanced by the learned counsel for the parties has been with regard to the application of the plaintiffs seeking recovery of arrears of rent amounting to Rs.9,49,495 from the defendant in each of the two cases. The trial Court has allowed the said application by observing that there is no dispute as regards the existence of landlord-tenant relationship between the parties, and that the plaintiffs have placed on record the documents to show that they have received rent only up to October, 2016. Accordingly, the plaintiffs in each of the two cases have been held entitled to recover arrears of rent from October 2016 till 07.02.2020, the date on which the lease was terminated.

17 Learned counsel for the defendant has contended that an order in terms of the provisions contained in Section 12(4) of the Rent Control Act could not have been passed by the trial Court because the said Act has ceased to apply after the promulgation of the Act of 2019. The learned counsel has submitted that the issue in this regard has

already been referred to the PIL Bench in a case titled **Manoj Kumar vs Dhara Singh** (CR No. 04/2024, order dated 16.05.2024). It has also been contended that the defendant has clearly pleaded in the written statements in both the suits that he has paid the rent up to March 2020 in cash to the plaintiffs, as such, it was not open to the trial Court to presume that the defendant is in arrears of rent.

18 Learned Senior Counsel, appearing on behalf of the respondents/plaintiffs, has contended that the fact that the issue regarding applicability or otherwise of the Rent Control Act after coming into force of the Act of 2019 has been referred to the PIL Bench should not detain us because even otherwise a civil Court has the power to direct a tenant to deposit the arrears of rent in exercise of its jurisdiction under Section 151 of CPC read with Order XXXIX, Rule 10 of CPC. In this regard, learned Senior Counsel has placed heavy reliance upon the judgment of the High Court of Kerala in the case of **Pramod vs. The Secretary, the Sultanpet Diocese Society** (OP(C) No. 2307/2022, decided on 25.09.2024). It has been contended that once it is an admitted position that the defendant has accepted that the plaintiffs are his landlords and once the tenancy and rate of rent are admitted, it would be open to a civil Court to direct the defendant to deposit the arrears of rent, which as per the learned Senior Counsel, is admittedly due to the plaintiffs.

19 In Pramod's case (supra), the High Court of Kerala has, after analysing the provisions of the CPC and the Transfer of Property Act, held in no uncertain terms that an order for deposition of rent can

be made against a tenant by a civil Court in exercise of its powers under Section 151 of the CPC. The Court has further gone on to hold that in default, a Civil Court has the power to even strike off the defence of the tenant/defendant while exercising its powers under Section 151 of the CPC. However, the Court has expressed its doubts about the applicability of the provisions of Order 39 Rule 10 CPC to such cases.

20 This Court is in complete agreement with the statement of law laid down by the Kerala High Court in the said Judgement to the extent that a civil Court has power to direct deposition of arrears of rent in exercise of its powers under Section 151 of CPC and that even the defence can be struck off, if the defendant fails to comply with such order. However, this Court is of the view that even the provisions contained in Order XXXIX, Rule 10 of CPC can also be resorted to by a Civil Court while directing deposition of arrears of rent by a tenant. This is clear from a bare perusal of the provisions contained in Order 39 Rule 10 of CPC, which reads as under:

"Order 39 Rule 10 CPC:

10. Deposit of money, etc., in Court- Where the subject-matter of a suit is money or some other thing capable of delivery and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security, subject to the further direction of the Court."

21 From a perusal of the aforesaid provisions, it is clear that the same are applicable to a case where a party to a suit admits that

he/she holds the money as a Trustee for the other party. Thus, while a tenant may dispute his/her liability to vacate the property and claim that his/her tenancy has not been validly terminated, he/she cannot claim that rent or compensation for use and occupation is not due to the plaintiffs. Therefore, in terms of Order XXXIX, Rule 10 of the CPC, in a suit between a landlord and a tenant, the subject matter of the suit involves not only the eviction of the tenant from the demised premises, but it also involves the money claimed for use and occupation of the property, before and after the termination of the contract, in case the tenant does not dispute that the same belongs to the plaintiffs. Thus, in such cases, a civil court has the power to direct the tenant/defendant to deposit the rent in court or to deliver it to the plaintiffs. To this extent, I respectfully disagree with the view taken by the Kerala High Court in *Pramod's case* (supra), wherein it has been observed that the court was not convinced as to whether an order calling upon the tenant to pay/deposit the admitted arrears of rent could be passed under Order XXXIX, Rule 10 of the CPC.

22 Thus, the legal position which comes to fore is that a tenant can be directed by a civil Court to deposit the arrears of rent during pendency of the suit for ejectment of the demised premises in exercise of its powers under Section 151 CPC and Order XXXIX, Rule 10 of CPC in appropriate cases where there is, *prima facie*, material on record to pass such a direction. A civil Court can also strike out the defence of the defendant, in case the order regarding deposition of rent is not complied with.

23 Now, adverting to the facts of the present case, the plaintiffs have claimed arrears of rent with regard to two demised premises from November, 2016 up to 06.02.2020, the date of termination of the tenancy in terms of legal notice dated 28.12.2019. There is no dispute to the fact that the plaintiffs are the landlords, whereas the defendant is the tenant, though the learned counsel for the defendant tried to raise an unnecessary and frivolous argument to deny the landlord-tenant relationship between the parties which argument is contrary to the pleadings of the defendant. In the written statements filed by the defendant, he has categorically averred that after the death of mother of plaintiffs, he has paid the rent to the plaintiffs through plaintiff No.4 in cash up-to March 2020, meaning thereby that he has accepted the plaintiffs as his landlords. It is pertinent to mention here that death of mother of the plaintiffs had taken place on 31.10.2017. Once the defendant has admitted that he has paid the rent to the plaintiffs, he cannot dispute the status of the plaintiffs as his landlords.

24 However, there is yet another aspect of the matter, which is required to be noticed. The defendant has taken a categorical stand that he has paid the rent to plaintiffs up to March, 2020 in cash, meaning thereby that he has disputed the assertion of the plaintiffs that he has not paid the rent after October 2016. So, it is a case where defendant has not admitted his liability to pay rent to the plaintiffs from November 2016 to March 2020. Thus, the question, whether or not the arrears of rent as claimed by the plaintiffs have been cleared by the defendant, becomes a disputed question of fact. But the trial Court has

assumed that the rent for the said period is due to the plaintiffs on the basis that they have produced receipts only up to October 2016. Once, the defendant has taken a categorical stand that he has paid the rent in cash to the plaintiffs, it gives rise to an issue which can be decided only upon trial of the case, though, heavy burden is cast upon the defendant to show that he has actually made the payments to the plaintiffs. Nonetheless, it could not have been assumed by the learned trial Court that the defendant is in arrears of rent from November 2016 to March 2020. The finding of the trial Court in this regard is grossly erroneous based upon no material. Therefore, it was not open to the trial Court to direct the defendant to deposit the arrears of rent from November 2016 to March 2020 without there being any admission on the part of the defendant.

25 Even under Section 12(4) of Rent Control Act which has been resorted to by the trial Court while passing the impugned order does not provide for a direction for deposition of arrears of rent for which recovery is being sought in the suit. This Court in the case of **Rajinder Kumar vs Deep Krishen Dutta, AIR 1995 J&K 74**, after placing reliance upon the judgment of a Division Bench of this Court in the case of **Sukhdev Raj and others vs. Harbans Lal and others, (1985) KLJ 148**, has held that if a remedy is sought by the recovery of rent in the main suit, an application for recovery of rent for the same period for which a civil suit is pending, cannot be made on the principle of two remedies in respect of the same relief. The Court has held that if a landlord has chosen a remedy by way of a suit in a competent Court

of law for recovery of rent, he will not be permitted to seek its recovery under Section 12(4) of the Rent Control Act in a summary manner. Accordingly, the Court has held that the landlord by invoking the provisions contained in Section 12(4) of the Rent Control Act can seek a direction against a tenant to pay the rent on a month to month basis, which becomes due after institution of the suit, but he cannot include the arrears prior to the institution of the suit. Thus, even in terms of Section 12(4) of the Rent control Act, it was not open to the trial Court to direct the defendant to deposit the arrears of rent prior to the institution of the suit.

26 For the foregoing reasons, the impugned order passed by the trial Court in both the suits to the extent it has directed the petitioner/defendant to deposit arrears of rent prior to the institution of the two suits, is not sustainable in law and deserves to be set aside.

27 Once the order directing recovery of rent from the defendant are held to be unsustainable in law, the impugned orders passed by the trial Court on 15.06.2023 in the two suits whereby the defence of the defendant has been struck off, lose their basis and also deserve to be set aside.

28 For what has been discussed hereinabove, the petitions are partly allowed and the impugned orders dated 27.05.2023 passed in the two suits to the extent of directing recovery of arrears of rent from the petitioner are set aside. Consequently, the impugned orders dated 15.06.2023 passed in the two suits whereby defence of the defendant has been struck off, are also set side. However, the order dated

27.05.2023 to the extent of rejecting the three applications of the defendant is upheld. It is further made clear that plaintiffs are at liberty to make an interim application for recovery of arrears of rent/occupation charges from April 2020 onwards before the trial Court and if and when such an application is made, the same shall be considered by the trial Court most expeditiously in accordance with the principles discussed hereinabove.

29 The record along with a copy of this judgment be sent back.

(Sanjay Dhar)
Judge

Jammu
29 .11.2024
Sanjeev

