

## **Topic for Presentation**

**Deposition of Rent under Rule 5 of Order 15  
CPC is mandatory or discretionary**

**-By Ms. Shachi Sharma,  
Secretary, District Legal Services Authority, Almora**

# • **O.15,R.5 CPC provides that-**

**5. Striking off defence for failure to deposit admitted rent, etc.– (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 percent 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 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, 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, paid to the lessor acknowledged by the lessor in writing signed by him and the amount, if any, deposited in any Court under Section 30 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972.

**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 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 10 days of the first hearing or, 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 sums before he is allowed to withdraw the same.

**Hon'ble Supreme Court in the case of  
Asha Rani Gupta vs. Vineet Kumar, 2022  
SCC Online SC 829**

**Decided on 11-07-2022**

**Held that under CPC Order 15 Rule 5 mere denial of landlord-tenant relationship doesn't grant tenant a holiday from duty to pay rent/damages.**

**It was also held that in cases disclosing deliberate defiance and elective non-performance on the part of the tenant, the consequence of law remains inevitable, that the defence of such a defendant would be struck off.**



- The instant appeal concerns procedural issues under Order XV Rule 5 CPC that arose in a suit for eviction and recovery of rent arrears, as well as damages for use and occupation.
- The plaintiff-appellant contended that she is the owner of the suit shop because she purchased it from its previous owner via a sale deed dated 10-05-2010, and that the defendant-respondent has been a tenant since the time of its previous owner.

- She claimed that the respondent is a chronic defaulter in payment of rent and taxes, and that despite knowledge of the sale deed and despite her demand, the rent and taxes had not been paid to her since May 2010.
- On the contrary, the respondent denied that the plaintiff and he had a landlord-tenant relationship. Though he did not deny his position as a tenant in the suit shop, the defendant claimed that the alleged sale deed is illegal and void.
- The plaintiff-appellant had filed an application under Order XV Rule 5 CPC, requesting that the defendant's defence be struck off because he had not deposited any rent and had provided no evidence to establish any payment of rent.

According to Order XV Rule 5 CPC, **failure to make deposits may result in the Court dismissing the tenant's defence.**

- However, **before issuing an order striking off defence**, the Court **must consider the defendant's representation** if it is made within **10 days** of the first hearing or within **10 days** of the expiration of one week from the date of accrual of monthly amount.
- **The Court stated that this would directly relate to such facts, factors, and circumstances where full and punctual compliance had not been made for any legitimate reason, as opposed to a defiance or volitional/elective non-performance approach.**

- The Court noted that while the **first part of sub-rule (1) of Rule 5 of Order XV CPC** requires deposit of the admittedly due amount of rent plus interest, the **second part** mandates that whether or not the tenant admits the amount to be due, he must regularly deposit the monthly amount due within a week of its accrual throughout the duration of the suit.

**The Court held that by simply denying the plaintiff's title or the landlord-tenant/lessor-lessee relationship, a defendant in the current suit cannot enjoy the property during the pendency of the suit without depositing the rent/damages.**

- **The Court held that the defendant's conduct amounted to volitional non-performance and defiance because his assertions and conduct left no doubt that he has been steadfast in not making payment of rent/damages, despite being lessee of the suit shop.**
- As a result, the Court determined that there was no reason for the High Court to intervene in lower Courts' concurrent findings.
- **The High Court's order was overturned, and the Trial Court's order was reinstated.**

**Thank You**