

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No.3147 of 2015 (O&M)
Date of Decision: 25.05.2015

Subhash Chand

..... PETITIONER

VERSUS

Krishan Chand (deceased) through LRs.

..... RESPONDENT

PRESENT: - Mr. Rahul Sharma, Advocate
for the petitioner.

CORAM: **HON'BLE MR. JUSTICE SHEKHER DHAWAN**

- 1) Whether Reporters of the local papers may be allowed to see the judgment?
- 2) To be referred to the Reporters or not?
- 3) Whether the judgment should be reported in the Digest?

SHEKHER DHAWAN, J.

The present revision petition against order passed by the learned Appellate Authority under the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as 'the Act') whereby the Appellate Authority dismissed the appeal against order dated 19.02.2014 passed by the Rent Controller, Ambala.

For convenience sake, hereinafter, reference to the parties is being made as per their status before court of first instance.

The detailed facts are already recapitulated in the judgments of the courts below and are not required to be reproduced. In brief, the facts relevant for disposal of this second appeal are to the effect that an application under Order 9 Rule 13 read with Section 151 CPC was filed for setting aside the ex parte proceedings and eviction order dated 28.02.2009. The litigation was set into motion by Krishan Chand by filing petition of ejectment.

Initially the respondent put his appearance and filed written statement and contested the petition and was proceeded against ex parte before the Rent Contorller on 14.11.2007. Application under Order 9 Rule 13 was filed for setting aside order mainly on the ground that the petitioner was under bonafide belief that he was being duly represented by his counsel. Compromise was arrived at between the parties for enhancement of rent from ₹635/- to ₹800/-. On the intervening night of 6/7 September, 2009, landlord proclaimed that he got the possession of the shop in dispute and on inquiry, the petitioner found that an ex parte order has been passed against him in violation of oral compromise. The plea was taken that the petitioner should

not be punished because of mistake of counsel and for no fault on his part. The said application was contested that the same was not filed within limitation period. No compromise had taken place between the parties. The petitioner had put in appearance before the Rent Controller and, thereafter, none was present on behalf of the petitioner, as such, ex parte judgment was passed.

The following issues were framed and settled on the application:

1. Whether there is sufficient ground for getting setting aside the judgment dated 28.02.2009 in favour of applicant? OPA
2. Whether application is within time? OPA
3. Whether application is not maintainable? OPR
4. Whether the applicant is estopped by his own act and conduct from the filing the present application? OPR
5. Relief.

However, after considering the evidence available on file, the Court of first instance did not find any merit in the application and the same was dismissed. The petitioner filed appeal before the Appellate Authority under the Act and remained un-successful and, as such, the present revision before this Court.

At the time of arguments, Mr. Rahul Sharma, learned counsel for the petitioner took the plea that the

ejectment order was passed on the ground of material alterations whereas in fact no alteration was done. There was no diminishing of value of the property in dispute. The petitioner was not at fault at any stage as he had engaged his counsel but the counsel failed to put in appearance to defend his client and on that account. Petitioner should not be put to suffer and the present revision be accepted.

Having considered the submissions made by learned counsel for the petitioner, this Court is of the considered view that the grounds taken in the application were duly considered by the Court of first instance and order dated 19.02.2014 was passed. The Courts below have rightly observed that it is not believable at all that the applicant was not in contact with his counsel during the intervening period though his counsel used to reside at a short distance. More so, he had been receiving rent every month and issued receipts against the same. The petitioner remained ex parte for the period from 14.11.2007 till 28.02.2009. The Courts below have rightly come to the conclusion that even the rent was increased orally from ₹635/- to ₹800/- and as such, the plea of compromise is not believable. There was no evidence available on file that any rent was received by the landlord after 14.11.2007 when he was proceeded against ex parte. The applicant has not been

able to make out any case as to why he remained away from the proceedings of the Court after putting in appearance and filing written statement. The plea that his counsel had not informed him about stage of the case has rightly been negated by the Courts below. Application was filed under Order 9 Rule 13 CPC in setting aside exparte proceedings and in those proceedings, the grounds of ejectment could not be taken into consideration.

In view of the above, the present revision petition is without any merit and the same is dismissed.

(SHEKHER DHAWAN)
JUDGE

May 25, 2015

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