

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.3195 of 2015 (O&M)
Date of decision : July 08, 2015

Sukhdev Singh

..... Petitioner

Versus

Lakhwinder Singh

..... Respondent

CORAM : HON'BLE MR.JUSTICE GURMIT RAM

1. To be referred to the Reporters or not? No / Yes
2. Whether the judgment should be reported in the Digest? No / Yes

Present : Mr. Jaideep Verma, Advocate,
for the petitioner.

GURMIT RAM, J.

1. This revision is preferred by the tenant against the order dated 07.04.2015 (Annexure P-6) passed by the learned Additional District Judge, Ludhiana in CMA No.186 dated 02.05.2014, RBT No.37 dated 09.01.2015 vide which the application under Order 6 Rule 17 CPC for amendment of the application under Order 9 Rule 13 CPC was declined.
2. The facts in nut-shell as mentioned in the revision petition are that respondent herein (landlord) filed an application under Section 13 of the East Punjab Urban Rent Restriction Act 1949 (in short "the Act") for the eviction of the tenant from the demised premises vide Rent Application

No.8 of 09.06.2006. Tenant appeared and filed his reply. He used to remain sick due to his stomach problem. It was disclosed by him to his counsel and his counsel assured him that he will attend his case on each and every date of hearing and would inform him accordingly. The tenant remained hospitalized in Lal Nursing Home, GNE Market, Gill Road, Ludhiana from 22.07.2011 to 29.07.2011 due to his aforesaid problem, hence he could not appear before the learned Rent Controller on the date fixed i.e. 25.07.2011. His counsel also did not appear in the Court on the said date fixed i.e. 25.07.2011, consequently he was proceeded ex-parte vide order of the same date. Ultimately an ejectment order was passed against him on 02.02.2012. He came to know about passing of aforesaid ejectment order on 15.12.2012, when summons were received by him from the Executing Court. Then he filed an application under Order 9 Rule 13 CPC for setting aside the ex-parte order dated 25.07.2011 along with some objections which were also dismissed by the learned Rent Controller vide order dated 07.02.2014 which is stated to be illegal, null and void. Then he preferred an appeal against this order before the learned Appellate Authority, Ludhiana. During the pendency of the appeal, he filed the instant application under Order 6 Rule 17 CPC for amendment of application under Order IX Rule XIII CPC. The learned Appellate Authority rejected this application vide impugned order dated 07.04.2015 which resulted into filing of the instant revision petition.

3. Counsel for the petitioner was heard and record as available on file was also perused.

4. The learned counsel for the petitioner has contended that the amendment sought in this case was merely explanatory and clarificatory in

nature. It was not likely to alter/change the plea earlier taken by him if allowed. Impugned order was also stated to be patently illegal as well as null and void. Finally prayer has been made to set aside the impugned order by accepting instant revision petition.

5. As per the record, the ejectment application against the tenant for eviction from the demised premises was filed on 09.06.2006 in which the tenant initially appeared and later on proceeded against ex-parte vide order dated 25.07.2011 due to his non-appearance. Thereafter, he did not bother about the proceedings of this case and ultimately an ex-parte ejectment order was passed against him on dated 02.02.2012 (Annexure P-2). Then it is his plea that he came to know about this order (Annexure P-2) on 15.12.2012 when he received summons from the executing Court. Thereafter, he filed an application under Order 9 Rule 13, CPC, for setting aside ex-parte ejectment order dated 2.2.2012, i.e. after a gap of more than 7 months from the date of his alleged knowledge about the passing of this order. In the application, he did not take any plea regarding suffering from stomach problem and it was declined by learned Rent Controller vide order dated 07.02.2014 (Annexure P-4). He preferred an appeal against this order vide CMA No.186 dated 02.05.2014, RBT No.37 dated 09.01.2015. During the pendency of this appeal, he moved the instant application under Order 6 Rule 17 CPC (Annexure P-5) on dated 19.12.2014 for amendment of the application filed under Order 9 Rule 13, CPC. In this application he took the plea for the first time that he could not appear before the learned Rent Controller on 25.07.2011 as he was ill on account of stomach problem and was admitted in Lal Nursing Home, GNE Market, Gill Road, Ludhiana from 22.07.2011 onwards. The fact regarding any ailment was not mentioned by

him in his earlier application filed under Order 9 Rule 13, CPC.

6. The entire act and conduct of the petitioner (tenant) shows that his sole intention is to prolong the ejectment proceedings in question either one way or the other. When he was proceeded against ex-parte on 25.07.2011 due to his alleged illness then he was supposed to contact his counsel after his recovery, which he did not do. As per his averments he came to know about the passing of ex-parte ejectment order dated 25.07.2011 against him on 15.12.2012 and filed application initially for its setting aside on 05.08.2013. He had filed the instant application for amendment during the pendency of the appeal before the learned Appellate Authority by making a concocted story. So as such this revision petition does not have any merit and as such it stands dismissed and disposed of.

Since the main revision has been disposed of, hence pending miscellaneous application, if any, also stands disposed of automatically having been rendered infructuous.

July 08, 2015

Gaurav Sorot

**(GURMIT RAM)
JUDGE**