

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 3619 of 2015 (O&M)
Date of decision: 17.07.2015

Jagdish Singh

... Petitioner

versus

Digambar Jain Society (Regd.)

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Kanwardeep Singh, Advocate, for the petitioner.

K.Kannan, J.

The petition is to challenge an order passed by the Rent Controller dismissing an application filed by the tenant for rejection of the petition. The petition has been filed by a landlord under the provisions of the Haryana Urban (Control of Rent and Eviction) Act, 1973, on a plea that the tenant has ceased to occupy the premises for 3 years after the institution of the petition. The ground for rejection in the application filed by the tenant was that the landlord had earlier filed an application on the very same ground, began his evidence but abandoned that resulted in dismissal of the petition for default. This according to the tenant will constitute a bar under Order 9 Rule 8 and 9, for filing a fresh petition. The Court dismissed it holding that the provisions of Cr. P.C. are not applicable *stricto vigore* and the aggrieved party is the revision petitioner before this Court.

It is a trite law that Rent Controller is a *persona designata* and not a Court. The rules of procedure are not directly applicable though they are invoked and Court will exercise the same powers as the Civil Court would in matters of amendment of pleadings, summoning of witnesses, setting aside the ex-parte orders etc., but, if any party seeks for a specific power of institution of a suit I would look for definite provisions which might constitute such a bar. It shall be grossly unjust for any Rent Controller to scoop as it were the provisions of Cr.P.C. for their application. It will make meaningless the creation of a separate body and the legislation that allows for greater flexibility and adopt procedure which are summary for disposal. If the Court would therefore take a view that the provisions of Cr.P.C. would not be directly applicable and that will not apply Order 9 Rule 8 and 9, I will not see that to be off the mark to call for intervention.

Even if such a bar to be applied I will still hold petition to be perfectly competent. The ground for eviction, namely, cessation to occupy that applied to the filing of the earlier petition that resulted in dismissal of default is not the very same period for which the landlord seeks for an eviction in the subsequent petition. The law requires the cessation to occupy in any place other than hilly area to last for 4 months without reasonable cause under the provisions of Section 13(2) (v). If the petition was filed more than 4 months after the dismissal of the earlier application and if the landlord was able to show the cessation to occupy for even a lesser period of what he has set forth in the petition but adequate enough

period for the purpose of the legal provision then he should have the benefit of such proof and obtain an order of eviction. To that extent, the subsequent petition must be taken as arising from a fresh cause of action and the dismissal of the earlier petition cannot come in the way.

The counsel wants this order to be applicable only at the interlocutory stage and will not have a bearing to the maintainability of the petition. I will reject his argument and hold this to be applicable at all stages for I have decided on the maintainability of the petition for that was the point at issue in the application under Order 7 Rule 11.

There is not merit for the intervention. The civil revision petition is disposed of with above observations.

(K.KANNAN)
JUDGE

17.07.2015

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