

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CR No.3847 of 2015 (O&M)
Date of decision : July 06, 2015**

Kaushalaya Rani

..... Petitioner

Versus

Satish Kumar Aggarwal

..... 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. Rahul Rampal, Advocate,
for the petitioner.

GURMIT RAM, J.

1. This revision is preferred by the petitioner herein (tenant) against the order dated 07.05.2015 passed by the Court of learned Civil Judge (Junior Division), Ludhiana vide which the application under Order 9 Rule 4 CPC read with Section 151 CPC for restoration of the miscellaneous application under Order 9 Rule 13 CPC has been dismissed.

2. Brief facts as mentioned in the revision petition are that respondent-herein (landlord) filed an application under Section 13 of East Punjab Urban Restriction Act, 1949 (in short "the Act") for the eviction of tenant Mehnga Ram from the demised shop on the grounds of arrears of rent and that it is unfit & unsafe for human habitation. During the pendency

of this application, said tenant Mehnga Ram had expired on 16.06.2005. An ex-parte order of ejectment was passed by the learned Rent Controller vide judgment dated 18.09.2008 without impleading the LRs of the tenant. Then the petitioner-herein (tenant) filed an application under Order 9 Rule 13, CPC, for setting aside ex-parte order dated 18.09.2008. During the pendency of the said application, learned Rent Controller ordered for filing of copy of plaint and the said application was dismissed under Order 9 Rule 2, CPC, for non-compliance of the order, vide order dated 1.12.2011. Then the petitioner-herein (tenant) filed an application under Order 9 Rule 4 of the CPC for the restoration of the said application, which was also dismissed vide the impugned order dated 07.05.2015, which resulted in the filing of instant revision petition.

3. The learned counsel for the petitioner-herein(tenant) has contended that alleged copy of the plaint was not furnished to the Court by the counsel for the petitioner-herein (tenant) who was appearing on her behalf before the learned trial Court and as such, she should not be suffered due to the default of the counsel appearing on her behalf before the learned trial Court. From perusal of the impugned order, it is found that the petitioner herein (tenant) did not comply with the order of the Court from 10.06.2010 to 01.12.2011, i.e. for a period of about 1 ½ years. This act of the petitioner-herein (tenant) indicates that she did not bother to see her counsel during this period which shows negligence on her part. So in this situation, it is difficult to say anything against the conduct of her counsel.

4. Then on merits of the case it is contended that the ejectment order dated 18.09.2008 is not tenable in the eyes of law, since the same being passed against a dead person. Copy of this order is available on the

record as Annexure P-1, which shows that respondent-Mehnga Ram was alive when the ejectment application was filed and he filed his written statement, but during the pendency of the petition he expired. So in this situation it was duty of his LRs to come to the Court to join the proceedings of this ejectment application. It is not the case of the petitioner-herein (tenant) that original tenant Mehnga Ram had died prior to the filing of instant ejectment application. Had it been so then the above contention of learned counsel for the petitioner-herein (tenant) could have been entertained.

5. Then record also shows that the ejectment application in question was instituted in the month of February, 1995 as shown in judgment Annexure P-1 dated 18.9.2008.

6. The learned counsel for the petitioner in support of his above contention has relied upon the case law as laid down in ***Kanshi Ram vs. Haryana State and others, 2004(4) R.C.R. (Civil) 102.*** In this case the counsel for the party did not appear on the date of hearing. Non-appearance of the party on that date was due to some illness and medical certificate in this regard was also produced. So the facts of this case are on different footings as compared to the facts of instant case and as such, it has no applicability to the present case.

7. In the light of the above discussion, this revision petition stands dismissed being found merit-less and disposed of accordingly.

July 06, 2015
Gaurav Sorot

(GURMIT RAM)
JUDGE