

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

Civil Revision No. 4100 of 2015 (O&M)

Date of decision : 3.7.2015

Amrit Kaur

... Petitioner

VS

Gurpal Narad

... Respondent

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Sandeep S. Majithia, Advocate, for the petitioner.

Rajesh Bindal, J.

Challenge in the present petition is to the order dated 19.3.2015 passed by the learned Court below whereby the application filed by the petitioner under Order XV Rule 5 CPC for striking off defence of the respondent-defendant was dismissed.

The proceedings arise out of a suit for possession by way of ejectment filed by the petitioner. When the case was taken up for hearing, considering the facts mentioned in the impugned order that the application for striking off defence of the defendant was filed, when evidence of the defendant had already been concluded on 29.4.2013, learned counsel for the petitioner was asked to apprise the court about the status of the case before the Court below. The case was passed over.

When the case was taken up second time, learned counsel for the petitioner submitted that he may be permitted to withdraw the present petition as the suit filed by the petitioner itself has already been decided by the Court below in her favour on 30.5.2015. The matter could have been left at this stage but seeing the conduct of the petitioner, this Court finds this to be a fit case for imposition of cost for filing frivolous petition. It would be appropriate to notice certain facts.

The petition impugning the order dated 19.3.2015 was filed in this Court for first time on 29.5.2015 and the same was returned with certain objections on 30.5.2015. It was re-filed on 30.6.2015 when again returned.

It was again re-filed on 1.7.2015. A perusal of the paper book shows that the application supported by affidavit for exemption from filing certified copies of Annexures P-1 to P-7 and typed copies of Annexures P-4 to P-7 is dated 29.6.2015.

The Registry was asked to get the file of the case from the Court below. The same was received. A perusal of the order passed on 29.4.2013 by the learned Court below shows that the evidence of the defendant was concluded and the case was fixed for rebuttal evidence, if any, and for arguments. Despite number of adjournments, the petitioner did not lead any rebuttal evidence. On 3.10.2013, the learned Court below noticed that one PW was examined and application under Order XV Rule 5 CPC was filed. Taking benefit of the situation, even the defendant in the suit filed application under Order VII Rule 11 CPC on 7.4.2014 for rejection of the plaint on the ground of deficient Court Fee. Both the applications remained pending. Finally the application under Order VII Rule 11 CPC was disposed of on 2.2.2015 requiring the petitioner to pay Court fee, which was paid. Thereafter, again the application under Order XV Rule 5 CPC remained pending which was disposed of vide impugned order dated 19.3.2015. After that the case was adjourned for five dates of hearing and finally disposed of on 30.5.2015. The petitioner was very well aware of the fact that after dismissal of her application under Order XV Rule 5 CPC, the case was listed for final arguments but still the present petition was filed in this Court challenging that order.

Considering the fact that after the defendant closed his evidence on 29.4.2013, the proceedings in the suit were delayed by the petitioner for a period of two years before the Court below and thereafter filed the present frivolous petition in this Court which was listed after the final decision of the suit filed by the petitioner, in my opinion, the petitioner deserves to be burdened with cost of ₹ 20,000/-, which may be deposited within a period of two months in the Registry of this Court.

The petition stands dismissed as withdrawn subject to deposit of cost.

3.7.2015
vs

(Rajesh Bindal)
Judge
(Refer to Reporter)