

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 5068 of 2013 (O&M)
Date of Decision : 10.02.2015

Shyamji and another

....Petitioners

Versus

Ram Krishan and another

....Respondents

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

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?*

Present: Mr. Amit Jaiswal, Advocate
for the petitioners.

Mr. Som Nath Saini, Advocate
for the respondents.

R.P. Nagrath, J. (Oral)

Petitioner-tenant has invoked the revisional jurisdiction of this Court under Article 227 of the Constitution of India seeking to set aside the orders dated 01.06.2013 (Annexure P-7) and 30.07.2013 (Annexure P-9).

An *ex parte* order of eviction dated 08.04.2013 was passed in the petition instituted on 06.12.2012. The eviction petition was fixed for 18.03.2013. It was stated that the petitioners were very much present in the court of Rent Controller and noted that the next date fixed in the case was 06.05.2013. The petitioners, however, came to know later on that they were proceeded against *ex parte* on 18.03.2013 and that the learned Rent Controller had passed *ex parte* eviction order dated 08.04.2013. The petitioners thus, filed an

application dated 02.05.2013 for setting aside *ex parte* order. That application was still pending before the Rent Controller. The petitioners filed a separate application of the same date i.e. 02.05.2013 before the Rent Controller with a prayer to stay the operation of eviction order dated 08.04.2013.

Learned Rent Controller granted the stay subject to the petitioners depositing arrears of rent, by 01.06.2013, but being poor persons they were unable to arrange for the huge amount of ₹70,000/-. The petitioners also made a prayer before the learned Rent Controller seeking permission to deposit the arrears of rent @ ₹1000/- per month being the agreed rate which was also declined vide order dated 30.07.2013. When the instant petition was listed on 22.08.2013, this Court passed the following order:-

“Learned counsel for the petitioners submitted that in the eviction petition filed by the landlords against the petitioners on 6.12.2012, the petitioners were proceeded against ex-parte on 18.3.2013. In fact, service of the petitioners was not effected. On 8.4.2013, ex-parte order of eviction was passed. After the petitioners came to know about the eviction order, an application was filed for setting aside the ex-parte order, in which vide order dated 1.6.2013, the Rent Controller stayed the operation of the order dated 8.4.2013 till the decision of the application for setting aside of the ex-parte order, subject to the condition that

the petitioners deposit the arrears of rent and other dues as claimed in the petition. In the petition, the landlords had claimed rent @ ₹ 4,000/- per month which, according to the petitioners, was merely ₹ 1,000/- per month and that had, in fact, been paid upto February, 2013. Petitioner No. 1 is in the job of ironing the clothes, whereas petitioner No. 2 is working as maid. The total amount payable has been determined at ₹ 70,000/-. It is difficult for them to pay the aforesaid amount in lump sum. He submitted that the petitioners will pay 50% of the amount within 10 days from today and balance 50% within two months thereafter.

Notice of motion for 6.11.2013.

Subject to the compliance of undertaking, as noticed above, the eviction of the petitioners from the premises in dispute shall remain stayed.”

In terms of the above order, the petitioners have since deposited the amount of arrears but rent for the subsequent period has not been tendered/deposited.

After hearing learned counsel for the parties, looking into the facts of this case that the ex parte eviction order under challenge is still in force and that the tenancy was created more than 10 years ago, the execution of the eviction order would remain stayed subject to the petitioner paying 50% of the upto date remaining outstanding

arrears of rent @ ₹ 4000/- per month to the respondent-landlord within one month i.e. on or before 15.03.2015 and rest of the amount of 50% by 15.04.2015 before the Rent Controller and keep on depositing the future rent by the 10th of each subsequent months till disposal of the application for setting aside the *ex parte* order. Failing to deposit the amount as aforesaid, the respondent-landlord would be at liberty to execute the eviction order passed by the Rent Controller.

Rent Controller is also directed to decide the application filed by the petitioner-tenant under Order IX Rule 13 CPC, expeditiously.

The petitioner would be at liberty to file appropriate application before the Rent Controller for adjustment of the excess amount at the time of provisional assessment of rent in case the *ex parte* order of eviction is set aside.

The instant petition is disposed of with the aforesaid observations and directions.

February 10, 2015
jk

(R.P. NAGRATH)
JUDGE