

In the High Court of Punjab and Haryana at Chandigarh

**Civil Revision No. 5692 of 2014
Date of Decision: 14.5.2015.**

Amar Dass Khullar

.....Petitioner

Versus

Gurminder Singh Kahlon

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. A.K.Chopra, Senior Advocate with
Mr. Harminder Singh, Advocate
for the petitioner.

Mr. Rajiv Joshi, Advocate
for the respondent.

SABINA, J.

Petitioner has filed this petition under Article 227 of the Constitution of India challenging the order dated 1.8.2014 (Annexure P-3) whereby application moved by the petitioner under Order 6 Rule 16 of the Code of Civil Procedure, 1908 ('CPC' for short), was dismissed.

Learned senior counsel for the petitioner has submitted that the impugned order suffers from factual errors. The Trial Court has presumed that the respondent has changed his counsel whereas a perusal of the interim order dated 18.4.2006 and the impugned order reveal that the respondent was being represented by the same counsel i.e. Mr. Baldev Raj. Learned senior counsel has further submitted that due to a typographical error, the name

of the counsel for the petitioner was mentioned as Baldev Singh, Advocate in the impugned order whereas the reply Annexure P-2 to the application filed by the plaintiff-respondent reveals that the same had been filed by Mr. Baldev Raj, Advocate.

Learned counsel for the respondent, on the other hand, has opposed the petition but has failed to controvert the submissions made by learned senior counsel for the petitioner that the petitioner was represented by the same counsel i.e. Mr. Baldev Raj, Advocate at the time of passing of the order dated 18.4.2006 and the impugned order dated 1.8.2014 (Annexure P-3).

Respondent has sought ejectment of the petitioner from the shop in question by moving a petition under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949. Petitioner moved an application for leave to defend. On 18.4.2006, following order was passed by the Trial Court:-

“Present:- Shri Baldev Raj, Adv. counsel for the petitioner.

Shri SK Aggarwal, Adv. counsel for the respondent.

Reply has not been filed to the application/affidavit filed by the respondent. On the request of ld. Counsel for the petitioner, that there is no need for filing reply to the application that petition has been u/s 13-B of the East Punjab Urban Rent Act. On the request of ld. Counsel for the petitioner, to come up for consideration on the abovesaid application on 17.5.2006.”

Thereafter, the ejectment petition was dismissed in default on 16.3.2011. The ejectment petition was restored vide order 2.9.2013. Thereafter, respondent filed reply to the application moved by the petitioner for leave to defend. Petitioner then moved

an application under Order 6 Rule 16 of the Code of Civil Procedure, 1908. Vide the impugned order dated 1.8.2014 (Annexure P-3), the said application was dismissed by the Trial Court and it was held as under:-

“Present:- Sh. Baldev Singh, Adv. Counsel for the petitioner.

Sh. S.K. Aggarwal, Adv. Counsel for the defendant.

This order or mine shall dispose of an application under Order 6 Rule 16 Section 151 CPC moved by the defendant through counsel.

In the application it is averred that Gurminder Singh Kahlon had brought the present application for ejectment under Section 13-B of the East Punjab Urban Rent Restriction Act and after the service the respondent appeared in the case and filed an appropriate application/affidavit dated 10.9.2005, thereafter, petitioner did not file the reply after availing sufficient opportunities and moreover the learned counsel for the petitioner suffered a statement that the respondent did not intend to file any reply as it was stated that there is no need of filing reply to the application under Section 13-B of the East Punjab Urban Rent Restriction Act. Then case was adjourned to 17.5.2006 for consideration. In the meantime the case was dismissed in default and thereafter it was again restored and on the previous date of hearing when the counsel for the respondent was busy in some other court, the applicant filed the reply to

application/affidavit dated 7.11.2013 which could not done legally and that application/affidavit dated 7.11.2013 is liable to be struck off and further prayed to allow the application.

Notice of the application served upon the petitioner who filed the reply in which he denied that the learned counsel for the petitioner suffered a statement that the respondent did not intend to file any reply as alleged. He further averred that the present application is devoid of any merit and is liable to be dismissed.

I have heard the learned counsel for the parties and carefully gone through the file.

The learned counsel for the applicant Amar Dass argued that the learned counsel for the petitioner suffered a statement that there is no need for filing reply to the application under Section 13-B of the East Punjab Urban Rent Restriction Act and it is in view of the matter that the case was adjourned to 17.5.2006 for consideration. But from the perusal of the judicial file there is no statement made by the learned counsel for the petitioner regarding the non filing of reply. Moreover there is zimni regarding the non-filing of the reply but my learned Predecessor has nowhere debarred the petitioner from filing the reply and further at present the petitioner has also changed his earlier counsel and who might have given oral undertaking but there is no proof and record pertaining to the statement of earlier counsel regarding the filing of the

reply and moreover no prejudice would be caused, if the petitioner had filed the reply to the leave to contest as it will help the court to decide the matter on merits. Moreover the court at this stage is not to consider the hyper-technical procedure rather the duty of the court is to advance justice on substantive laws and procedure. The learned counsel for the petitioner had placed reliance on 1971, RCJ 548 – wherein the Hon'ble Punjab and Haryana High Court held that the strict rules relating to pleadings contained in the code of Civil Procedure have no application to proceedings before the Rent Control Authorities. Accordingly, in view of the above discussion the application is disposed of.”

A perusal of the above order reveals that the Trial Court held that the respondent had changed his counsel. However, a perusal of the interim order dated 18.4.2006 and the reply Annexure P-2 to the application under Order 6 Rule 16 CPC filed by the plaintiff-respondent, reveals that the respondent is represented by the same counsel i.e. Mr. Baldev Raj. It appears that due to typographical error in the impugned order, the name of the counsel for the plaintiff has been typed as 'Baldev Singh' instead of 'Baldev Raj'. Moreover, the learned counsel for the respondent has failed to controvert the submissions made by the learned senior counsel for the petitioner that the plaintiff-respondent was represented by Mr. Baldev Raj, Advocate at the time of passing of the order dated 18.4.2006 and the impugned order dated 1.8.2014. Since the Trial Court was under the impression that the counsel had been changed by the respondent,

the Trial Court further held that there was no statement made by the counsel for the respondent on record. However, there was no occasion for the Trial Court to have doubted the interim order dated 18.4.2006. The Trial Court could have permitted the respondent to file reply to the application for leave to defend if it was convinced on merits but could not have allowed the same on wrong facts. Hence, the impugned order is liable to be set aside as it is based on factual errors.

Accordingly, this petition is allowed. Impugned order dated 1.8.2014 (Annexure P-3) is set aside. Trial Court is directed to pass a fresh order, in accordance with law.

However, it is clarified that anything observed above will have no bearing on the merits of the case.

**(SABINA)
JUDGE**

May 14, 2015
Gurpreet