

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CR No. 6628 of 2014 (O&M)

Date of decision: 30.03.2015

Tara Devi and others

... Petitioners

versus

Jainendra Gurukul Panchkula and others

.... Respondents

**CORAM: HON'BLE MR. JUSTICE K. KANNAN**

Present: Mr. Vivek Goel, Advocate for the petitioners.

Mr. Adarsh Jain, Advocate for respondent No.1.

**K.Kannan, J.**

The revision petition is against the dismissal of the application for setting aside the ex-parte order of eviction, which was passed on 23.07.2014. The petition was dismissed before the Rent Controller and the decision was affirmed by the Appellate Court. The defeated applicant is the revision petitioner before this Court.

It appears that the proceedings for recovery of possession was taken by the landlord by means of the suit when the Rent Act was not extended. There had been a defence taken that the suit was not maintainable and subsequently the rent petition was filed on a plea that the landlord had wanted to demolish the building and construct a new one for personal necessity and on the ground of non payment of rent. The tenant had engaged a counsel and filed the reply, but, he chose not to contest the case resulting in the tenant being set ex-parte on 23.04.2002. No application for setting aside the ex-parte was filed within reasonable time and the Rent Controller himself did not proceed to pass the order of eviction till as late as 02.12.2005. The landlord put the order of eviction to execution and the notice of execution was

received by the tenant on 27.05.2006. He took time to file objections periodically and filed his own application for setting aside the eviction only two years afterwards namely on 28.03.2008. The petitioner gave the reason for his non-appearance in the year 2002 to the death of his son and wanted the ex-parte order to be set aside.

Rent Controller, on consideration of the averments made, observed that the son had died only two months after the ex-parte decree and there was no reason given at all as to why he had not taken any step to set aside the ex-parte order which was passed originally on 21.06.2002 within any reasonable time. I must observe even here that even when the ex-parte decree was passed on 02.12.2005, in a situation where a tenant had also been served with summons, the date of knowledge was irrelevant and the petition should have been filed only within 30 days from the date when the ex-parte decree was passed. The petition ought to have, therefore, filed before 02.01.2006, but the petition was filed on 23.08.2008 and there was no accompanying petitioner to condone the delay in filing the petition. Yet somehow the Rent Controller took the knowledge as relevant which is not a correct statement of law but even assuming it to be so, the Courts below were correct in noticing that the tenant has been served with the notice of execution even on 27.05.2006 and there was simply no justification for still availing himself another two years time to file the application for setting aside the ex-parte decree.

In this case, even the tenant has expired and his legal representatives have joined. The counsel argues that the tenant was an old man and his legal representatives are in possession of only one room and if directed, they will pay the whole rent from the time when the rent was not paid. I find in this case, that there are no bona fides at all on the part of the tenant at any point of time. A person who was set ex-parte in 2002 cannot wait till August 2008 to come with an application to set aside the ex-parte decree. As I have observed, the proceedings for the landlord for securing the ejectment did not come

merely at the time when the petition had been filed. The suit for recovery of possession appears to have been filed sometime in the year 1988 and when the Rent was refunded, the suit was withdrawn and the petition was filed. The landlord has still not been able to secure the relief of what has been granted by the Courts below.

The petitioners have really enjoyed the benefit of the pendency of the petition for nearly three decades and I find no reason to give any indulgence to such a recalcitrant tenant and his legal representatives.

There is no merit at all in the civil revision petition and the Courts below have correctly considered that the petition was barred by limitation and there was also no merit in the contentions raised for setting aside the ex-parte decree.

The civil revision petition is dismissed with the above observations.

27.03.2015  
kv

**(K.KANNAN)**  
**JUDGE**