

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

116

CR No. 4687 of 2016

Date of Decision: July 26, 2016

LAKHWINDER KAUR

-PETITIONER

VS

VIJAY KUMAR

-RESPONDENT

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Om Pal Sharma, Advocate
for the petitioner.

Mr. Kirpal Singh Thakur, Advocate
for the caveator-respondent.

RAJ MOHAN SINGH, J. (ORAL)

Petitioner has assailed order dated 31.05.2016 passed by Civil Judge (Jr. Divn), Ludhiana whereby application for setting aside the proceedings/order dated 19.09.2015 was dismissed.

Vide order dated 16.04.2015, Civil Judge (Jr. Divn), Ludhiana disposed of an application filed by the plaintiff under Order 15 Rule 5 CPC alleging that the suit was filed by him for possession as well as recovery of arrears of rent. Rent was claimed from June, 2011 @ Rs.6000/- per month.

The defendant did not appear despite service and was proceeded against exparte vide order dated 05.12.2013. However, the said exparte proceedings were set aside on 20.03.2014 subject to payment of cost of Rs.1000/-. Thereafter, case was fixed for filing of written statement and the defendant took numerous adjournments for filing written statement. The written statement was filed only on 08.01.2015. In the said application, trial Court observed that the defendant could not produce any record to show payment of rent made by him from June, 2011 to November, 2014. The defendant admitted that rate of rent was Rs.2500/- per month only and showed his willingness that if an opportunity is given to him, the tender would be made. The trial Court in all fairness granted an opportunity to the defendant to tender rent @ Rs.2500/- per month from June, 2011 to November, 2014 along with interest @ 9% per annum vide order dated 16.04.2015.

Said order was challenged by the petitioner in Civil Revision No.3166 of 2015 before the High Court. Following order was passed by the High Court on 09.09.2015:-

“Counsel for the petitioner states that the amount, as has been assessed by the Civil Judge (Junior Division) Ludhiana vide order

dated 16.04.2015 along with arrears shall be deposited by the petitioner within a period of 10 days from today.

In the light of the statement made by the counsel for the petitioner, the present revision petition is disposed of.

It is made clear that in case the petitioner is able to produce evidence with regard to the rent having been already paid for the period in question or a part thereof, an appropriate order in this regard shall be passed by the trial Court at the time of final adjudication.”

Pursuant to the order dated 09.09.2015 passed by the High Court, the case was taken up before the trial Court on 11.09.2015 and the following order was passed:-

“Present: Plaintiff in person.

Sh. Gagandeep Singh, counsel for the defendant.

Plaintiff placed on file copy of order dated 09.09.2015 passed by the Hon'ble High Court in CR No.3166 of 2015. The Hon'ble High Court in said order directed the defendant to deposit the rent within 10 days. On request of counsel for defendant case is now adjourned to 19.09.2015

for the said purpose.

Sd/-

Mandeep Singh

Civil Judge (Junior Division)/Ldh/11.09.2015”

Trial Court adjourned the case for 19.09.2015. Apparently, in view of order dated 09.09.2015, period of 10 days from 09.09.2015 was given to the petitioner to pay entire arrears of rent. The said period came to be expired on 19.09.2015, the date which was given by the trial Court. On 19.09.2015, petitioner did not appear before the Court and was proceeded against exparte. An application was moved for setting aside the exparte order dated 19.09.2015 on the ground that in fact 19.10.2015 was inadvertently noted by learned counsel for the defendant-petitioner. On 19.09.2015, case was adjourned to 23.10.2015 for exparte evidence of the plaintiff. In the meantime, petitioner filed an application for setting aside the order dated 19.09.2015 on 23.10.2015. The said application was not pursued by the petitioner at one point of time, resultantly, that application was also dismissed in default on 11.01.2016. Thereafter, the petitioner did not attend the Court for consecutive dates. On 19.01.2016, an application was filed for restoration of application dated 23.10.2015 and the same was allowed by the trial Court on 06.04.2016 subject to cost of Rs.500/-.

Admittedly, that cost has been paid by the petitioner. The entire arrears of rent has not been paid till date and the learned counsel for the petitioner tries to explain that the payment of Rs.45,000/- was made earlier and even if some arrears are still pending, he will make good the same in installments. The trial Court by taking note of the conduct of the petitioner passed the impugned order dismissing the application for setting aside the application for recalling the order dated 19.09.2015.

Considering the background in which the order dated 16.04.2015 was passed in an application under Order 15 Rule 5 CPC and the order passed by this Court on 09.09.2015, the payment of entire arrears of rent has not been paid by the petitioner within stipulated period. A justification is sought to be made by taking the plea that payment of amount of Rs.45,000/- was made prior thereto and arrears, if any, are to be calculated at the fag end of the litigation.

I do not subscribe the plea taken by the petitioner. The very import of application under Order 15 Rule 5 CPC if read in conjunction with the order passed by this Court on 19.09.2015, would reveal that a concession was given to the petitioner to deposit the entire arrears of rent within 10 days from passing of order dated 09.09.2015. Instead of making payment of entire rent on the target date i.e. 19.09.2015, petitioner opted

to remain absent from the Court and thereafter, turn around and said that date was wrongly recorded. The subsequent conduct of the petitioner is also liable to be deprecated.

Taking stock of the entire situation, this Court does not like to interfere in the revision petition.

Accordingly, the same is dismissed.

26.07.2016

jyoti Y.

**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No