

CR No. 7403 of 2016 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No. 7403 of 2016 (O&M)

Date of Decision: November 07, 2016

Dr. Mohinder Singh Marwaha

...Petitioner

Versus

Pritpal Singh & another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Avtar Singh Bhatti, Advocate
for the petitioner.

AUGUSTINE GEORGE MASIH, J. (Oral):

CM No.22575-II of 2016

Exemption is granted from filing certified and typed copies of order dated 04.07.2016 passed by the Rent Controller, Ludhiana, as well as Annexures P-1 to P-7 and the same are taken on record, subject to all just exceptions.

Application stands disposed of.

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Challenge in this revision petition is to the order dated 04.07.2016 passed by the Civil Judge (Junior Division), Ludhiana, whereby, the application under Order 9 Rule 13 of the Code of Civil Procedure (hereinafter referred to as 'CPC) read with Section 151 CPC, for setting aside the *ex parte* decree, has been dismissed.

It is the contention of the learned counsel for the petitioner that *ex parte* order dated 27.08.2013 passed by the Court is not sustainable as

the said order has been passed primarily on the ground of non-filing of the written statement. He contends that as a matter of fact, the written statement was already on record as is apparent from the order dated 19.03.2013 passed by the Rent Controller, Ludhiana. His further contention is that thereafter, the petitioner had been appearing before the Court when the case was always fixed for the evidence of the respondents-landlords and he, on this assumption that the evidence of the respondents-landlords is in progress and being not aware of the order of *ex parte* having been passed against him, *bona fide* remained silent, however, the final *ex parte* decree was passed on 25.04.2014 (Annexure P-3). He, on this basis, contends that the petitioner being not aware of the fact that the *ex parte* order has been passed against him, under the *bona fide* belief had been attending the proceedings before the Court and the moment, he came to know that an *ex parte* order has been passed against him, moved an application for setting aside the *ex parte* decree. He, thus, contends that the order as has been passed by the Civil Judge (Junior Division), Ludhiana, dated 04.07.2016, cannot sustain and deserves to be set aside.

I have considered the submissions made by the learned counsel for the petitioner and with his assistance have gone through the impugned order as also the *zimni* orders which have been passed by the Rent Controller.

The assertion of the counsel for the petitioner to the extent that written statement was filed on 19.08.2013 appears to be correct as in the *ex parte* decree also, there is a reference thereof, however, it is a matter of fact that the petitioner was proceeded against *ex parte* on 27.08.2013.

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Thereafter, the case has been taken-up on various occasions where the petitioner has not appeared as his presence has not been marked nor his counsel's presence is marked. The plea of the petitioner that he had been attending the Court proceedings, thus, cannot be accepted as on none of the occasions he appeared nor his counsel had appeared. The Court has finally proceeded to pass the *ex parte* decree after the conclusion of *ex parte* evidence of the respondents-landlords. The plea as taken by the petitioner having been found to be false and concocted story having been prepared only with an intention to cover-up the faults, the findings as recorded by the Rent Controller, Ludhiana, in its impugned order dated 04.07.2016, cannot be said to be without any basis.

The plea of the petitioner that he was unaware of the fact that *ex parte* proceedings have been initiated against him also cannot be accepted because a person who is well-educated and a Doctor by profession, cannot be said to have been not aware of the fact that neither his presence is being marked in the Court nor his counsel is appearing when the case is taken-up for hearing especially when the evidence of the respondents was being recorded *ex parte*.

In view of the above, finding no merit in the present revision petition, the same stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

November 07, 2016
Harish

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No