

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

**Civil Revision No.7538 of 2015 (O&M)
Date of Decision: September 23, 2016**

Amar Dass

.....Petitioner

Versus

Gurminder Singh Kahlon

....Respondents

CORAM:- HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Vipin Mahajan, Advocate
for the petitioner.

Mr. Gaggandeep, Advocate
for the respondent.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.23825-CII of 2015

Application is allowed as prayed for subject to all just exceptions and exemption from filing the certified/original copies of Annexures P-1 to P-7 and from filing the true typed and photostat copies of Annexures P-5 and P-6, is granted.

CM No.19131-CII of 2016

Prayer in this application is for directing the Rent Controller, Batala, to adjourn the case beyond the date fixed in the Revision Petition which is 19.12.2016.

Notice of the application.

Mr. Gaggandeep, Advocate, who is present in the Court, accepts notice on behalf of the non-applicant/respondent.

Counsel for the parties agreed that Civil Revision Petition itself may be preponed and taken on board for disposal.

At the request made by counsel for the parties, the present application is disposed of as infructuous and the main revision petition is taken on board for final disposal.

CR No.7538 of 2015

Challenge in this revision petition is to the order dated 31.08.2015 passed by the Rent Controller, Batala whereby an application under Order 6 Rule 16 of the Code of Civil Procedure, 1908 ('CPC' for short) read with Section 151 CPC preferred by the petitioner has been dismissed, wherein the prayer made was qua striking down the reply to the application/affidavit dated 07.11.2013 submitted by the petitioner to the application for grant of leave to contest under Section 13 of the East Punjab Urban Rent Restriction Act, 1949.

It is the contention of learned counsel for the petitioner that earlier the application which was moved by the respondent in reply to the application, which has been moved by the petitioner for leave to defend was dismissed by the Rent Controller, Batala which was challenged by the petitioner by filing Civil Revision No.5692 of 2014 (*Amar Dass Khullar Vs. Gurminder Singh Kahlon*) which petition was allowed by this Court vide order dated 14.05.2015, remanding the case back by setting aside the impugned order dated 01.08.2014 and directing the Rent Controller, Batala to pass a fresh order. It is in pursuance to the said order that the present impugned order has been passed. Counsel contends that primarily it appears that the Rent Controller, Batala has been influenced by the observations made by this Court in Civil Revision No.5692 of 2014, proceeding on the assumption that the reply to the application for leave to defend had to be allowed rather the Court had directed

the Rent Controller to decide the application preferred by the petitioner on merits. His further submission is that the application for leave to defend was filed by the petitioner on 10.09.2005. After various opportunities granted to the respondent, statement was made by the counsel for the petitioner on 18.04.2006 which has been recorded in the said order to the effect that no reply to the application for leave to defend is required to be filed. Once a statement has been given by the counsel, which has been accepted and had been continuing as such without there being any request/permission from the Court for filing reply to the application specially when the main revision petition was dismissed for non-prosecution on 16.03.2011 which was only restored on 02.09.2013, there was no occasion to file reply to the application for leave to defend at this belated stage when it was filed on 07.11.2013, without obtaining any permission from the Court and in the absence of the counsel for the petitioner. It is, under these circumstances that an application under Order 6 Rule 16 of the Code of Civil Procedure read with section 151 CPC was preferred by the petitioner for striking down the reply filed by the respondent to the application for leave to defend. He, thus, contends that the impugned order dated 31.08.2015 cannot sustain and deserves to be set aside as the respondent had been sleeping over his right firstly and secondly, grave prejudice would be caused to the petitioner in case the reply to the application for leave to defend is permitted to be taken on record.

On the other hand counsel for the respondent asserts that earlier order dated 01.08.2014, which was passed by the Rent Controller, Batala had been challenged by the petitioner wherein the said order was set aside primarily on the ground that there was certain factual errors in the order. Court had not commented upon the merits of the case and had proceeded on the assumption

that there was a change of counsel because of which such a reply to the application for leave to defend had been filed on 07.11.2013. He, contends that as a matter of fact, there has been no change of counsel and the reply to the application for leave to defend has been filed by the same counsel i.e. Sh. Baldev Raj. He, on this basis, contends that probably because of lack of information/instructions from the counsel for the respondent, then appearing in the revision petition, it could not be brought to the notice of the Court. He, in any case submits that there would be no prejudice caused to the petitioner as in the reply to the application for leave to defend, it was specifically been stated by the counsel that he had not made such a statement in the reply to the application under Order 6 Rule 16 of CPC read with Section 151 CPC preferred by the petitioner, the same counsel had stated that he had not given such a statement before the Court on 18.04.2006. That apart, he contends that because of the delay in the proceeding, it is rather the petitioner who has been benefited as the present petition which has been filed by the respondent is under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949, which has to be proceeded summarily and in fact by continuing in the premises as tenant. It is the petitioner who has got the benefit of the inaction on the part of the counsel for the respondent.

Further, he contends that striking provisions of the Code of Civil Procedure are not applicable to the proceedings before the Rent Controller, Batala and in support of the said contention he place reliance upon the Full Bench Judgment of this Court in "*Model Town Welfare Council Vs. Bhupinder*, AIR 1973, P&H 76." He, on this basis contends that technicalities cannot come into the proceedings as far as they are relatable before the Rent Controller under the Rent Act as it is to a limited extent that the provisions of the Code of

Civil Procedure has been made applicable as provided for under Section 16 of the East Punjab Urban Rent Restriction Act 1949.

I have heard learned counsel for the parties and with their able assistance have gone through the impugned orders and other documents placed on record including pleadings before the Rent Controller, Batala. The facts as has been narrated above, are not in dispute except for the statement of the counsel for the respondent as has been recorded in the order dated 18.04.2006, wherein it so mentioned that the counsel for the respondent does not want to file reply to the application for leave to defend preferred by the petitioner. Suffice it to say that it itself could not be a bar to subsequent moving of an application for filing a reply to the application for leave to defend at a subsequent stage, merely for the reasons that such a statement has been given specially when the reasons as assigned in the order dated 14.05.2015, passed in Civil Revision No.5692 of 2014 is found to be not correct as per the facts and pleadings brought on record by the counsel for the parties during the hearing of the case as is apparent from the interim orders which has been placed on record. The counsel before the Rent Controller, Sh. Baldev Raj, all through was contesting on behalf of the respondent. It is only on 26.04.2014, that Sh. Satwinder Singh, Advocate filed a power of attorney on behalf of the respondent but prior thereto all through Sh. Baldev Raj, Advocate had been appearing for the respondent. It appears that because of incomplete instructions with the counsel when the Civil Revision No.5692 of 2014 was considered and decided that such an aspect has been recorded in the order of this Court that there was an error on the factual side rather the position would be that there was no such factual error.

Further, the plea of the counsel for the petitioner that prejudice would be caused to the petitioner because of now permitting the filing of the reply to the application for leave to defend. Suffice it to say that in a proceeding under Section 13-B of the East Punjab Urban Rent Restriction Act 1949, the prejudice because of the delay, if any, primarily is caused to the landlord and not to the tenant. The effort which has been put in by the counsel for the petitioner to depict the delay in filing the reply to the application for leave to defend would rather be to the benefit of the petitioner as he is continuing in the premises as a tenant. That apart, it may be added here that the reasons and the justification given by the Rent Controller, Batala in its order dated 31.08.2015, is in accordance with the basics of doing complete justification to the parties and the technicalities of the provisions as contained in the Code of Civil Procedure cannot be imported into an inquiry which is held by the Rent Controller, Batala under the Rent Act. The Full Bench judgment in the *Model Town Welfare Council's case (supra)* would amply make it clear on this aspect. Further, all parties should be given reasonable opportunity to put forth their claim before the Authority which has been recognized and given effect to by the Rent Controller, Batala vide its impugned order dated 31.08.2015.

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

(AUGUSTINE GEORGE MASIH)
JUDGE

September 23, 2016
ps-I

Whether speaking/reasoned	:	Yes/No.
Whether reportable	:	Yes/No