

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.7378 of 2014

Date of Decision: October 05, 2016

Deep Chand

...Petitioner

Versus

Tek Chand (since deceased) through L.Rs.) & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Raj Kapoor Malik, Advocate,
for the petitioner.

Mr.Arvind Bansal, Advocate,
for the respondents.

AMIT RAWAL, J. (Oral)

Petitioner-defendant has filed an application under Order 9 Rule 13 CPC for setting-aside the ex-parte ejectment order dated 19.11.2009, but the same was dismissed vide impugned order.

This Court had issued notice of motion and Mr.Arvind Bansal has raised an objection qua maintainability of the petition. Mr.Raj Kapoor Malik has relied upon the ratio decidendi culled out by the Division Bench of this Court in **Tirlok Singh Anand Versus M/s Prem Chand and Sons and others, 2013(1) RCR (Civil) 488** to contend that the order passed on application under Order 9 Rule 13 CPC would not be appealable, but revisable in the rent matters.

I am unable to scribe to the submission of Mr.Malik as the question raised before the Division Bench has been answered by holding that any order passed by the Rent Controller only under Sections 4, 10, 12

and 13 of the East Punjab Urban Rent and Restriction Act, 1949 would be appealable and for setting-aside of *ex-parte* ejectment order passed under Order 9 Rule 13 CPC, the remedy for the tenant is two-fold (i) either to file appeal under Section 15 of the Haryana Urban (Control of Rent and Eviction) Act, 1973; (ii) to move an application under Order 9 Rule 13 CPC. On dismissal of the application under Order 9 Rule 13 CPC, as per the provisions of Order 43 Rule 1(d) CPC, the remedy is to file the appeal but not the revision. While answering the questions framed, it has been held by the Division Bench that any order passed on the application under Order 9 Rule 13 CPC for setting-aside the *ex-parte* ejectment order would not be revisable.

At this stage, learned counsel for the petitioner seeks leave of the Court for withdrawal of the present revision petition with liberty to file an appeal in accordance with law supported by an application seeking condonation of delay. If any appeal is filed within a period of one month, the period spent in this Court shall be construed to be un-consumed subject to the objection raised by the other side with regard to that period.

Dismissed as withdrawn with liberty as prayed for.

October 05, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No