

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.119 of 2016 (O&M)
Date of Decision: 14.09.2017

Harish Chander

... Petitioner

Versus

Vijay Kumar and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Ashok Kumar Khunger, Advocate,
for the petitioner.

Mr. Priyanshu Kamra, Advocate,
for the respondents.

RAJIV NARAIN RAINA, J.

CM No.19574-CII of 2017

1. The application is allowed as prayed for. Pleadings in the two rent petitions i.e. Rent Case No.2.2 of 2006 and Rent Appeal No.1 of 2014 are taken on record as Annexures R-1 to R-4.

Main Case

1. The petitioner is the landlord. The petition to evict his tenant was dismissed by the Rent Controller on the ground that no evidence was led by him to prove his case on the pleaded grounds of eviction. He filed an appeal before the Appellate Authority at Fazilka.

2. The landlord challenged the order of assessment of provisional

rent passed by the Rent Controller before this Court. He failed to appear before the trial Court or produce his evidence. The reason given by the petitioning landlord is that because he had filed a case in this Court, he lost touch with his counsel and could not appear on the date fixed. The dismissal was under Order 17 Rule 3 CPC. In his appeal, he prayed for providing him adequate opportunity to lead evidence by remanding the case. The appeal has been dismissed.

3. Before coming to the impugned orders, a few facts may be narrated of the previous litigation between the parties. The first rent petition was filed on February 27, 2006 against the respondent tenant. The Rent Controller dismissed the petition on merits on January 16, 2014. Appeal to the Appellate Authority failed on merits on May 18, 2015. The landlord did not file a revision petition in this Court challenging the orders of the rent authorities. While proceedings in the first rent petition were in progress the second ejectment rent petition No.6-2 was filed on August 08, 2012 on what Mr. Khunger says was on identical grounds. The first rent petition was dismissed on January 16, 2014 and the second petition on March 11, 2015 under Order 17 Rule 3 CPC for failure to leading evidence. The appeal stands dismissed by the Appellate Authority at Fazilka on October 29, 2015 which has given rise to the present petition.

4. All this means that from August 08, 2012 to March 11, 2015 landlord did not lead any evidence whatsoever despite many opportunities afforded to him. Interestingly, the plea that the rent petition could not be pursued because of the pendency of the landlord's petition against assessment of provisional rent was pending, and due to this he lost touch

with his counsel, has no force because no evidence was placed on record to show that a revision petition was filed by the landlord in the High Court and if any stay was granted therein. Accordingly, the Rent Controller would have no knowledge of those proceedings unless documents were placed before him.

5. The Rent Controller in his order dated March 11, 2015 has observed that the petitioner failed to lead even an iota of evidence and therefore his pleadings remained only on paper.

6. The case of the landlord was that the shop is over 100 years old and built with brick and mud mortar without any damp proofing coating. The building is B-class construction according to PWD specifications and has outlived its life. It is in dilapidated condition and has become unfit and unsafe for human habitation. The shop requires reconstruction and in addition, the landlord personally requires the shop for setting up his own business and to establish his son who has not been doing well in studies.

7. It turns out that Rajeev Kumar whose need was set up was son of one Vishnu Bhagwan whose need was pressed by the landlord Harish Chander as his own. Neither Vishnu Bhagwan nor his son Rajeev Kumar are impleaded as parties.

8. Provisional rent was assessed by Court on April 25, 2014. Issues had been framed and the case was posted for landlord's evidence. Four effective opportunities were granted to him to lead evidence but no evidence came forth and ultimately his evidence was closed by order March 11, 2015 which led to the dismissal of the rent petition itself invoking the provisions of Order 17 Rule 3 of the CPC.

9. The learned Additional District Judge-cum-Appellate Authority (Rent), Fazilka in his order dated October 29, 2015 in appeal against the order of Rent Controller dated March 11, 2015 has not accepted the explanation that landlord lost touch with his counsel and, therefore, could not lead evidence since his energy was diverted to litigation in the High Court. Firstly, no such petition was filed nor did the learned Rent Controller have knowledge of anything of the kind. Moreover, the order impugned was passed in the presence of his counsel. For these reasons, the appeal has been dismissed and consigned to the record room.

10. I have heard learned counsel for the parties at considerable length, firstly on September 04, 2017 when I heard the case partly and posted the matter to September 14, 2017 for final disposal to be shown in the urgent list since arguments spilled over.

11. Having heard the learned counsel, I do not find any cogent reason to interfere with the appellate order dated October 29, 2015 when the reasons given for non-appearance are either non-existent or fallacious. If the landlord lost touch with his counsel, his counsel appeared when both the orders were passed. Equity lies with those who do equity. The story is a concocted one upon which no trust and faith can be placed by Court.

12. While dismissing this revision, the impugned order dated October 29, 2015 is upheld as within jurisdiction and based on sound reasoning. There is no error apparent on the face of record. Nor can sympathy lie with the petitioner.

13. The contention of Mr. Kamra urging that a second petition on the same grounds is not maintainable on which the earlier petition was

dismissed is not without merit. The averments in the second/ present revision petition have been perused. There is force in Mr. Kamra's submission that the grounds in both are substantially the same.

14. The first petition for eviction was not only on the ground of non-payment of rent but also that the demised premises have become unfit and unsafe for human habitation and for personal requirement of his nephew Rajeev Kumar are the same in the second/present petition. The orders in the first petition have attained finality since no revision was filed by the landlord in the High Court. The second petition was filed during the pendency of the first petition and before its conclusion. Parallel proceedings were not in order and deserve no encomiums.

15. There is sufficient case law on the point of res judicata. Final decisions of the Rent Controller between the same parties are res judicata. The issue has been exhaustively considered on a reference to a larger bench of two Hon'ble Judges of this Court (D.K. Mahajan and H.R. Sodhi, J.J.) reported in case Rattan Chand v. Jagmohan Singh, 1971 RCR (Rent) 841: AIR 1972 Punjab 153 and a host of other judgments cited by Mr. Kamra for the proposition that the opposite party cannot be vexed twice for the same cause and other related issues. See: i) Arijan Singh v. Sada Nand and another, 1986 (2) RCR (Rent) 226; ii) Mehtab Singh v. Tilak Raj Arora and another, AIR 1989 P&H 12; iii) Shri Sardari Lal Jain since deceased through LRs v. Smt. Dhanwanti Devi, 2002 (2) RCR (Rent) 296. It matters little if such a declaration is given on this aspect since I have dismissed the main petition and endorsed the impugned orders which would lead to dismissal of the present second rent petition itself.

16. For the reasons above mentioned, this petition is hereby dismissed.

14.09.2017
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(RAJIV NARAIN RAINA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>