

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

CR No.4043 of 2016
Date of decision: 24.03.2017

Sitar KhanPetitioner
Versus
Gamdur Singh ...Respondent

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.J.S.Saini, Advocate, for the petitioner.

Mr.Rakesh Dhiman, Advocate, for the respondent.

G.S. SANDHAWALIA, J. (Oral)

Challenge in the present revision petition, filed by the petitioner-tenant, is to the order dated 21.04.2016 (Annexure P6) whereby on non-filing of the written statement and on account of last opportunity being given, the defence of the tenant was struck-off and the case was fixed for evidence of the landlord. The said order was stayed on 04.07.2016, while issuing notice of motion.

Counsel for the respondent has submitted that various opportunities were given but the tenant was negligent, as such, in filing the reply.

On the other hand, counsel for the petitioner submits that only 1 ½ months had expired since putting in appearance was on 01.03.2016 and therefore, the Rent Controller acted in haste and that he should have put the petitioner on caveat by imposing costs, before taking such a drastic step.

The said submission is liable to be accepted. A perusal of the zimni orders would go on to show that notice was only issued on 21.01.2016 for 01.03.2016 and on that date itself, memo of appearance was

filed and the case was fixed for 16.03.2016, for filing written statement and power of attorney. The power of attorney was filed on the said date but written statement was not filed. But thereafter, on two dates, written statement was not filed and last opportunity was granted on 16.04.2016, which led to the passing of the impugned order on 21.04.2016.

It is settled principle that rules of procedures are handmaid of justice. The Rent Controller should have imposed costs and put the tenant on guard that his defence is liable to be struck off. There has been lapse on the part of the tenant also and for the said act, the other side could be duly compensated by way of payment of costs.

Accordingly, keeping in view the above discussion, the present revision petition is allowed and the order dated 21.04.2016 (Annexure P6) is set aside. The written statement shall be filed within a period of 4 weeks from today, subject to payment of Rs.5000/- as costs, to the landlord. It is made clear that if the costs are not paid and the written statement is not filed, within the prescribed time, the order impugned shall come back into force.

24.03.2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*