

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

C.R. No. 3693 of 2017 (O & M)

Date of decision: 22.05.2017

Jugal Kishore (deceased) through L.R.

....Petitioner(s)

Versus

Bhavnesk Kumar and another

...Respondent(s)

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

Present: Mr. Deepak Arora, Advocate,
for the petitioner.

G.S.SANDHAWALIA, J. (Oral)

The present revision petition by the tenant is directed against the order dated 13.02.2017 whereby, the Appellate Authority, Gurdaspur has dismissed the appeal against the dismissal of ex parte eviction order dated 17.12.2011 passed by the Rent Controller.

The reasoning given by the Appellate Authority to decline the said relief is that appearance was put in by the tenant before the Rent Controller on 28.05.2009 and subsequently, he failed to turn up and he was proceeded against ex parte on 23.09.2009. Resultantly, being well aware of the pendency of the eviction petition, he could not now turn around and say that the order was not justified. The plea taken that the shop in question had been taken on rent from one Jagdish Raj and rent was being paid to him was also rejected on the ground that the ex parte ejectment order was dated 17.12.2011 and the suit was filed by the tenant on 11.10.2012 whereby, a decree was passed on 27.10.2014 against the said Jagdish Raj.

Resultantly, it was held that the same was filed to create evidence and there was no record to show that Jagdish Raj had any

connection with the shop in question and interference was declined.

It is pertinent to notice that the eviction petition was filed on the ground that the shop was lying closed and there were also arrears of rent @ ₹25/- per month and the shop was in a dilapidated condition being of more than 90 years of age. It is to be noticed that the petition kept pending for almost two years before the Rent Controller whereby the evidence was led by the respondent-landlord to prove his case. At no stage, the present petitioner preferred to join proceedings though he was already well aware of the same having earlier put in appearance. After passing of the eviction order on 17.12.2011, firstly he filed an application under Order 9 Rule 13 CPC on 26.09.2012 challenging only the ex parte order dated 23.09.2009 and not the subsequent order of eviction. The application was dismissed by the Rent Controller on 21.08.2015. Thereafter, the appeal came to be filed on 09.09.2015 which has now been also rightly dismissed.

A perusal of the above sequence of events would go on to show that it is an attempt to delay the proceedings so that the landlord is unable to get the fruits of litigation. No sufficient cause has been shown as to why there was non-appearance before the Rent Controller after having put in appearance and being well aware of the proceedings, it is not open to him now to question the ex parte eviction.

Accordingly, finding no merit in the present petition, the same is dismissed in limine.

22.05.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No