

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

C.R. No. 4110 of 2017
Date of decision: 02.06.2017

Bhagwan Singh

....Petitioner(s)

Versus

Dhoop Singh

...Respondent(s)

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

Present: Mr. Lajpat Rai Sharma, Advocate,
for Mr. Lalit Pardhan, Advocate,
for the petitioner.

G.S.SANDHAWALIA, J. (Oral)

The present revision petition is directed against the order dated 27.04.2017 (Annexure P-3) whereby, the Rent Controller, Bhiwai has dismissed the application under Order 9 Rule 13 CPC for setting aside the ex parte ejectment order dated 26.04.2013 (Annexure P-2) whereby, eviction was ordered of the petitioner-tenant on the grounds of bona fide requirement after he had been proceeded against ex parte on 16.04.2010.

Counsel for the petitioner has vehemently submitted that the petition was filed on 13.07.2009 and thereafter also, two petitions were filed on 17.12.2011 and on 15.04.2013 wherein, rent had been claimed for subsequent periods from 01.04.2009 till 31.12.2011 and for 01.01.2012 to 31.03.2013 @ ₹860 per month. It is submitted that the landlord never disclosed the pendency of the earlier petition and, therefore, the petitioner had already tendered the rent in the first petition on 01.10.2009 and his absence thereafter was only on account of the fact that he was under the impression that the petition was only for the arrears of rent and, thus, he had

not put in appearance thereafter. It has been accordingly argued that in such circumstances since he has already tendered the rent for subsequent period, he should be given a chance to contest on merits since the eviction has been ordered ex parte on the grounds of personal requirement.

The reasoning given by the Rent Controller while dismissing the application under Order 9 Rule 13 CPC is that on subsequent dates also after the provisional rent was assessed counsel had put on appearance and taken time for filing reply on 26.11.2009, 09.01.2010 and 12.03.2010. Thereafter, he had been proceeded against ex parte and, therefore, once having been duly served, there was no sufficient cause to set aside the decree as there was no irregularity in the service of the summons and there was negligence on the part of the tenant. Resultantly, it was held that there was no sufficient cause and the application has been dismissed.

A perusal of the application filed under Order 9 Rule 13 would go on to show that the petitioner came to know about the ex parte decree on 06.01.2014 and thereafter, he filed the application under Order 9 Rule 13 on 03.02.2014. The petitioner, as noticed, was well aware of the proceedings which had been initiated against him. It is not his case that on an earlier occasion the landlord had been filing petitions claiming arrears of rent and it was in such circumstances he was under a mistaken belief that it was only for the arrears of rent. The petitions which have now been referred to which were instituted on 17.12.2011 and 01.01.2012 were instituted subsequently and, therefore, the argument now raised that he was under this impression is without any basis. The petitioner had duly appeared and had knowledge of the proceedings. He had chosen to tender the rent in order to save himself from summary eviction in view of the settled principles of law but thereafter

his counsel appeared on 3 consecutive dates and sought time to file reply. For reasons best known to him, reply was not filed and the counsel thereafter chose not to appear on 16.04.2010 when the Court started ex parte proceedings. The matter did not stop there. Proceedings carried on for 3 more years. The landlord led his evidence and during this period also, no effort was made as such to join the proceedings at any stage. In such circumstances, the argument which has now been raised that it was on account of a mistake as such on the part of the tenant is not liable to be accepted. The provisions of Order 9 Rule 13 CPC deals with the sufficient cause for non-appearance which would convince the Court and where there is no negligence on the face of the record so that the parties are not adversely affected. The application would also suffer from the bar of limitation as 30 days time is prescribed from date of knowledge. Once being aware of the proceedings it cannot co-relate to knowledge derived from execution proceedings.

In the present case, the argument which has now been raised that the other side can be compensated with costs cannot be accepted. The clock cannot be set back to naught to the year 2010 for the landlord who has successfully proved his case for non appearance of the petitioner-tenant who was well aware of the proceedings but chose not to join.

In such circumstances, the reasoning given by the Rent Controller does not seem to be suffering from any infirmity or illegality which would warrant interference and the present revision petition is dismissed in limine.

02.06.2017

shivani

Whether reasoned/speaking

Whether reportable

(G.S. SANDHAWALIA)

JUDGE

Yes/No

Yes/No