

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.109

C.R. No.5928 of 2017 (O&M)

Date of decision: 11.10.2017

Harjinder Singh Kathuria

....Petitioner

versus

Harvinder Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. S.K. Sandhir, Advocate
for the petitioner.

* * *

DEEPAK SIBAL, J. (Oral)

Through a petition filed under Section 13 of the East Punjab Urban Rent Restriction Act, 1949, on the ground of non-payment of rent, the petitioner sought the eviction of the respondent from the first floor of SCF No.38, Main Market Sarabha Nagar, Ludhiana (for short the 'tenanted premises').

On being put to notice, the respondent initially appeared before the Rent Controller, Ludhiana, but due to his non-appearance on subsequent dates, through an ex-parte order dated 17.09.2016, the Rent Controller, Ludhiana ordered the respondent's eviction from the tenanted premises. The petitioner sought execution of the eviction order. However, since the respondent had filed an application under Order 9 Rule 13 of the Code of Civil Procedure, 1908 (for short the 'Code') seeking to set aside the afore-referred ex-parte eviction order dated 17.09.2016, an application was moved by the respondent before the Executing Court seeking stay of the execution

proceedings till the application filed by him under Order 9 Rule 13 of the Code was finally adjudicated upon. The Rent Controller, Ludhiana, finding merit in the plea raised by the respondent, through order dated 09.02.2017, stayed the execution proceedings during the pendency of the application filed by the respondent under Order 9 Rule 13 of the Code. Such order is the subject matter of challenge in the present petition.

Learned counsel for the petitioner submits that the respondent had initially appeared in the eviction proceedings. He was thus very much aware of the pendency of such proceedings. Therefore, the ex-parte eviction order dated 17.09.2016 passed due to his subsequent non-appearance was perfectly legal. It is further submitted that on principle of equity as well, the respondent deserves no relief as he through the ex-parte order dated 17.09.2016 has been found in arrears of rent of over ₹11 lakhs.

Still further learned counsel contends that the respondent after having initially appeared in the eviction proceedings did not appear on subsequent dates and willfully permitted the passing of the ex-parte eviction order. Thereafter, only with the intention to delay the vacation of the tenanted premises, he has moved the application under Order 9 Rule 13 of the Code seeking setting aside of the ex-parte eviction order dated 17.09.2016.

No merit is found in the above submissions.

It is not disputed that the respondent has been ordered to be evicted from the tenanted premises through an ex-parte order dated 17.09.2016 and that he has availed of his statutory remedy available to him under Order 9 Rule 13 of the Code seeking setting aside of such ex-parte proceedings on the grounds so mentioned in the application. It is also not

disputed that in such proceedings notice has been issued to the petitioner and the matter is still to be finally adjudicated upon.

That being so, I find no infirmity in the order impugned before me passed by the Executing Court staying the execution proceedings only till the time, the statutory remedy availed of by the respondent under Order 9 Rule 13 of the Code is not finally adjudicated upon. If during the pendency of such application the executing proceedings are allowed to continue it would virtually render the statutory remedy availed of as infructuous.

Since the matter under Order 9 Rule 13 of the Code is still pending final adjudication, no opinion at this stage can be or is being expressed on whether the respondent had willfully permitted the passing of the ex-parte eviction order and then sought setting aside thereof through an application under Order 9 Rule 13 of the Code only to delay the proceedings. Such plea shall be considered by the competent court on its merits while finally deciding the afore application.

Nonetheless, since the application filed by the respondent under Order 9 Rule 13 of the Code is admittedly pending for about last 09 months, the Rent Controller, Ludhiana is requested to take a final decision thereupon within a period of two months from the date of receipt of a certified coy of this order.

The petition is dismissed in the afore-referred terms.

(DEEPAK SIBAL)
JUDGE

11.10.2017

Jyoti 1

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No