

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

**CR No.6516 of 2017**

**Date of Decision: 11.10.2017**

Hari Krishan and others

... Petitioners

Versus

Dharminder Kumar and others

... Respondents

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

Present: Mr. Sumeet Mahajan, Sr. Advocate,  
with Mr. Amit Kohar, Advocate,  
for the petitioners.

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**RAJIV NARAIN RAINA, J.**

1. When the matter came up for hearing on September 25, 2017, the case was adjourned for the learned Senior counsel to obtain instructions through the engaging counsel from the latter's client whether the better course to be adopted in this case is to withdraw the eviction petition itself and then institute a fresh one on the same cause of action and on any other permissible ground which may have become available during the intervening period. This course is necessitated due to a fatal flaw in the landlord's petition which has not been signed by petitioner No.5, the landlord. The result of the lapse was that there was no due verification of facts to qualify the contents of petition as pleadings.

2. If the entire action is capable of falling to the ground upon this crucial defect, and not just a mere technicality, and which goes to the root of the petition I would tend to agree with Mr. Mahajan, learned Senior counsel

upon his reconsideration of the matter that such a course deserves to be adopted with leave of Court to withdraw Rent Petition No.60 of 2013 (Filing No.1120/2013) decided by the Rent Controller in Sub Division, Kalka dismissing the case *inter alia* due to the defect in landlord not signing the petition.

3. I would permit this to happen because the defect was and is curable in nature and no prejudice can result to the tenant-respondent if the oral prayer is allowed upon due instructions from the landlord. To achieve this end opportunity of hearing to the respondent in the making of his order is not legally necessarily as he cannot urge that the defect should remain forever. Moreover, he would be put to avoidable expense in case notice is issued in this petition only to ultimately pass the same order. In any case, it would be a useless formality.

4. Accordingly, the rent petition is dismissed as withdrawn with the liberty to the petitioners to file a fresh eviction petition on the same cause of action and on all legally available grounds, for a fresh rent trial in accordance with law and with full opportunity to the tenant to set up his statutory and other defences against the new rent petition, as and when instituted.

(RAJIV NARAIN RAINA)  
JUDGE

11.10.2017  
manju

Whether speaking/reasoned Yes

Whether reportable No