

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

**Civil Revision No.7012 of 2016 (O&M)
Decided on : 23.05.2017**

M/s Kwaliti Restaurant and others

... Petitioners

Versus

Kuldeep Kaur Dhillon and another

... Respondents

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

Present : Mr. Aashish Chopra, Advocate
for the petitioners.

Mr. Ameet Awasthi, Advocate
for the respondents.

G.S. Sandhawal, J. (Oral)

The present revision petition has been filed by the tenant who is aggrieved against the order dated 10.03.2016 (Annexure P-6) and 28.07.2016 (Annexure P-9) passed by the Rent Controller, Chandigarh.

Vide the order dated 10.03.2016, the Rent Controller had directed the petitioner-tenant to file reply to the main petition and also directed the parties to disclose the status of the previous rent petitions stated to be pending. Thereafter, vide the order dated 28.07.2016 liberty had been granted to intimate the status of the previously rent petitions instituted *inter se* the parties or action taken by the concerned Court.

Counsel for the petitioner was mainly aggrieved that on the same cause of action two eviction petitions had been filed and the second one which was filed could not have been filed.

It is not disputed that on an earlier occasion an eviction petition

had been filed in the year 2009 by the respondent-landlord on the ground that rent had not been paid for the month of January to March, 2009 @ ₹2,20,000/- per month and, therefore, the ejectment was sought. Additionally the ground taken was that there was violation of the terms and conditions of the tenancy and on account of alterations done and therefore, the value and utility of the shop had been diminished.

On the same cause of action the second petition dated 12.11.2011 (Annexure P-1) came to be filed, where apart from other grounds, the arrears of rent for the said period were again claimed and it was specifically mentioned in paragraph No.4 of the second petition that the earlier petition filed on 16.05.2009, the tenants had put in appearance and filed their written statement and the case had been fixed for the evidence of the petitioner on 01.04.2010. On account of the transfer of proceedings to the Court of Shri Parinder Singh, the learned Rent Controller, the matter was fixed for 17.10.2011, but the file was not put up as it was not traceable. Resultantly, second petition had been filed and eviction was sought on the same grounds.

It was in such circumstances, various applications came to be filed. Since a second petition was not maintainable, the first order was passed on 26.08.2014 (Annexure P-4), whereby the proceedings were stayed and, thereafter, the efforts were made by the Rent Controller to find out the latest status from both parties, but the same could not be effected.

Resultantly, on 10.03.2016 (Annexure P-6) vide the impugned order, in view of the status of the earlier case not having been disclosed by either side, it was held that the proceedings cannot be held pending for an indefinite period and direction was issued to file written statement. Thereafter, another application was filed by the petitioners that the status of the previous rent petitions be disclosed and that an application should be filed for reconstruction of the file, which was again disposed of vide second impugned order dated 28.07.2016 (Annexure P-9). The said application was, thus, disposed of and liberty was granted to intimate the status of the previously instituted rent petition and to intimate the status of the missing record.

When the matter came up before this Court, vide order dated 30.11.2016 a direction was issued to the District & Sessions Judge, Chandigarh to make efforts for reconstruction of the file.

Resultantly, a report dated 21.12.2016 in pursuance of the above said order has been received, wherein on the strength of the letter of the Rent Controller, namely, Ms. Baljinder Kaur, this Court was informed that the file has been partly reconstructed, but the *zimni* orders were not available with the Stenographers nor with the learned counsels for the parties.

Counsel for the respondent on the other hand submits that the first petition itself has now been withdrawn on 23.01.2017. The order dated 23.01.2017 reads as under:-

“Sh. Murat Singh Dhillon, General Power of Attorney

Holder of petitioners appeared in person through counsel named above and moved an application for withdrawal of the present petition due to changed circumstances. He also suffered a separate statement that he had filed this petition and after service of respondent, written statement was filed and thereafter file went missing. That, thereafter waiting for about 2 years tracing of the lost file, he filed second petition mentioning of the previous petition which had gone missing. That, he had also filed the similar petition in the Court of Sh. Hirdejit Singh, Learned Rent Controller, Chandigarh, which is pending and he had taken most of the grounds taken in the third pending petition in view of the circumstances mentioned above, so no useful purpose will be served with the continuation of the present petition and he withdraw the present petition without prejudice to his pending cases. In view of the statement suffered above by Sh. Murat Singh Dhillon, General Power of Attorney Holder of petitioners alongwith his counsel named above, the present petition is hereby dismissed as withdrawn. File be consigned to record room, Chandigarh, after due compliance.”

A perusal of the statement also recorded of the landlord would go on to show that after the first petition was lost, the subsequent petition was filed. The same grounds were taken in the petition and therefore, he withdrew the first case.

In view of the abovesaid circumstances, it is apparent that for no fault of the parties and due to mistake on behalf of the Court staff, for which a regular inquiry has been marked, the parties were put to disadvantage. The landlord has not been able to get the provisional rent assessed, in view of the file having not been traced. In such

circumstances, if the second petition was filed, it was in duly justified circumstances and there was no concealment of any fact.

Resultantly, in view of the subsequent events, the present revision petition has become infructuous and is, accordingly, disposed of.

MAY 23, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>