

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

CR No. 7266 of 2017 (O&M)

Date of decision: 10.11.2017.

Raj Kumar Garg

...Petitioner

versus

Kamlesh Chand

...Respondent

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

Present : Mr. Vivek Suri, Advocate for the petitioner.

RAJIV NARAIN RAINA, J. (ORAL)

1. Mr. Dhruv Gupta, Advocate who was in Court holding watching brief has put in appearance on behalf of the respondent with his vakalatnama. The same is retained on record.

2. By consent the matter is taken up for final disposal at the first hearing itself. Heard counsel on their respective stands.

3. Though the conduct of the tenant cannot be applauded, but, the only thing going for him is that when the matter came up for hearing on 31.07.2017, the petitioner having sought three opportunities of which the last was vide order dated 06.07.2017, Rent Controller accommodating the tenant with last opportunity to file his written statement, is that the adjournment on 31.07.2017 was not opposed by the landlord on the statement of the learned counsel for the tenant that compromise talks were going on between the parties. Accordingly, the case was adjourned to 21.08.2017 for filing reply to the petition as well

as for the presence of the parties for settlement. It was again ordered by the Rent Controller that this would be the last opportunity.

4. On the adjourned date, the matter could not be taken up since due to a grim law and order situation prevailing in Panchkula. Accordingly, the case was adjourned to 29.09.2017. On 29.09.2017 parties did not appear for attempting settlement. The reply was again not filed. This was strongly opposed by the landlord. The Controller did not accept the prayer for further adjournment for filing reply since last and final opportunity had been given for the purpose. The defence of the petitioner-tenant has been struck off vide impugned order dated 29.08.2017. The case is fixed for assessment of provisional rent on 21.11.2017.

5. Though I find nothing legally wrong in the impugned order but looking to the devastating implications and irreversible set back it might have on the rights of the tenant, thence in order to avoid a miscarriage of justice, this court accedes to the request of Mr. Vivek Suri that his mercy plea may be accepted as the respondent can always be compensated in terms of money by imposing costs.

6. His prayer has been opposed by the learned counsel for the landlord that there can be no endless mercy especially in rent matters, where such conduct of the tenant would delay pronouncement of judgment. However, looking to the facts and circumstances of the case and in the interest of justice and to balance out the competing interests

of the parties and above all that the judicial effort ought to be to ensure that cases should be decided on merits, the petition is allowed subject to the payment of costs of ₹ 20,000/- to be paid to the respondent landlord on the next date of hearing before the Rent Controller.

7. Learned counsel for the petitioner undertakes on behalf of his client on instructions that he would file his written statement three days before the actual date of hearing with an advance copy to the counsel opposite in addition to supplying its hard copy, the same be also sent by e-mail to the learned counsel for the landlord, to make service doubly sure. He also undertakes that he will not ask for an adjournment on 21.11.2017 for any reason and will address arguments before the Rent Controller on assessment of provisional rent.

8. The Rent Controller would hear the parties and pass the order there upon or as soon as practicable, depending on the discretion of the Controller.

9. Only to achieve the ends of justice seen to be done, the impugned order is regrettably set aside even though it does not suffer from any inherent defect or error. The advice to the Controllers in such situations is that when last opportunity granted is misused by a litigant, then, depending on the past conduct of the party, exemplary costs be imposed for an unwarranted adjournment after last opportunity at least in five figures, of course, with reasons recorded in writing for the High Court to understand, in case matter is brought up. This methodology

would rein in the obstructing party with his pockets made to hurt by penal costs, a language universally understood by the stake holders. The higher the stakes, the higher should be the costs as the last resort for unjustified demands for adjournments.

(RAJIV NARAIN RAINA)
JUDGE

November 10, 2017
kv

Whether speaking/reasoned : Yes
Whether reportable : Yes