

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

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**CR No.759 of 2014 (O&M)
Date of decision: 20.03.2017**

M/s Capital Glass House & another

...Petitioners

Versus

Geeta Devi

...Respondent

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

Present: Mr.Aman Dhir, Advocate, for the petitioner.

Respondent proceeded *ex parte*.

G.S. SANDHAWALIA, J. (Oral)

Challenge in the present revision petition is to the order dated 07.09.2011, whereby the application of the petitioner, filed under Order 9 Rule 13 CPC, for setting aside the *ex parte* eviction order dated 28.07.2008, was dismissed.

The reasoning given by the Rent Controller was that the evidence of the tenant was closed by order, under Order 17 Rule 3 CPC and inspite of availing sufficient opportunities, no effort was made for bringing on record any evidence to show that the eviction order dated 28.07.2008 was liable to be set aside.

It is also relevant to notice that last opportunity was granted for production of the entire evidence, subject to payment of costs of Rs.500/-. Neither the costs were paid, nor any witness was examined. The Full Bench in **Anand Parkash Vs. Bharat Bhushan Rai and another AIR 1981 P&H 269** has held that once the costs have been imposed and are not paid, the Court is under a compulsion to strike off the defence. The same reads as under:-

“16. Cases are not wanting in which the Courts have moulded their practice to meet a situation over which a party has had no control and for that purpose the Court has ample power under S. 148 of the Code which reads as under:--

"Where any period is fixed or granted by the Court for doing of any act prescribed or allowed by this code, the Court may in its discretion from time to time, enlarge such period, even though the period originally fixed or granted may have expired."

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As a result of the aforesaid discussion, I hold that in the event of the party failing to pay the costs on the date next following the date of the order imposing costs, it is mandatory on the Court to disallow the prosecution of the suit or the defence as the case may be, and that no other extraneous consideration would weigh with the court in exercising its jurisdiction against the delinquent party.

However, in cases, where costs are not paid as a result of the circumstances beyond the Court will be well within its jurisdiction to exercise its power under Section 148 of the Code in favour of the defaulting party if a strong case is made out for the exercise of such jurisdiction.”

Resultantly, any objection which is being raised to the order passed by the Civil Judge (Jr.Division) Chandigarh dated 07.09.2011, is without exception. The petitioner himself has failed to prosecute his case and therefore, now, cannot turn around and submit that while effecting service upon him in the eviction proceedings, proper procedure was not followed. It was open to him to agitate this issue before the Court concerned, which he failed to do. This Court, in revisional jurisdiction, cannot take over the mantle of the Rent Controller.

Accordingly, keeping in view the binding precedent of the Full Bench and conduct of the tenant, this Court is of the opinion that no indulgence can be granted to the tenant by interfering with the well reasoned orders of the Court below. Resultantly, the present revision petition is dismissed.

20.03.2017
sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No