

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

117

CR No.865 of 2017

Decided on : 07.02.2017

Trilok Sharma (since deceased) through his LRs

... Petitioners

Versus

Smt.Sumitra Devi

.. Respondent

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

Present : Ms.Sharmila Sharma, Advocate
for the petitioners.

G.S. Sandhawalia, J. (Oral)

The petitioners-tenants challenge the order dated 03.12.2016 (Annexure P/4) whereby their application for setting aside the judgment and decree dated 14.10.2015 passed by the Rent Controller, Panipat was dismissed. Challenge has also been made to the order dated 20.01.2017 passed by the learned Addl.District Judge, Panipat, who upheld the said decision.

Counsel for the petitioners has vehemently submitted that the deceased father of the petitioners was party to the proceedings of ejectment application which was filed on 13.04.2011 and therefore, they have been prejudiced as such. It is further submitted that since the father of petitioner namely Tirlok Sharma was suffering from cancer, there was non-appearance and ex parte proceedings were ordered on 21.07.2014 and thereafter, the ejectment order was passed on

14.10.2015. Accordingly, it is submitted that the courts below were not justified in dismissing the application under Order 9 Rule 13 CPC as there was sufficient cause of non-appearance.

The said argument cannot be accepted. It is to be noticed that initially the counsel had put in appearance upon service and vide order dated 13.09.2012, the LR's of the deceased, Trilok Sharma had been arrayed as parties, who are now the petitioners. They had failed to file reply/written statement and their defence was struck off vide order dated 22.09.2012. Thereafter, they failed to appear before the Court and were proceeded ex parte vide order dated 21.07.2014 and the case was fixed for ex parte evidence of petitioner. The proceedings remained pending before the Rent Controller till 14.10.2015 and eviction was ordered on non-payment of rent and bona fide necessity.

The petitioners had joined the proceedings and they filed an application to be impleaded as LR's. After a period of almost five months, an application was filed dated 11.03.2016 (Annexure P/1) taking the plea that there was a dispute raised in a suit for specific performance and they had come to know at that point of time regarding the ex-parte judgment and decree. It is in such circumstances, the courts below had dismissed the application keeping in view the fact that once parties were aware and the counsel had also put in appearance, there was no sufficient cause for setting aside the ex parte order of eviction.

It is settled principle that law is for the vigilant and not for those who slumber over their rights. Once the petitioners were aware of the proceedings and opted not to contest inspite of having been brought on record as LRs of the deceased, they could not turn around and plead that they were not aware of the proceedings. In the absence of sufficient cause, the application for setting aside the ex parte proceedings had been rightly rejected by the courts below. The said orders cannot be held to be suffering from any illegality or irregularity which would warrant interference by this Court under Article 227 of the Constitution of India.

Accordingly, the present revision petition is dismissed.

[G.S. Sandhawalia]
Judge

07.02.2017
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Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No