

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

Civil Misc. No.2956-CII of 2017 in/and
Civil Revision No.983 of 2017
Date of decision: 14.2.2017

Umardeen

...Petitioner

Versus

Karnail Singh

...Respondent

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

Present: Mr. D.S.Gurna, Advocate for the petitioner

G.S.SANDHAWALIA, J. (Oral)

Civil Misc. No.2956-CII of 2017

Prayer made in the present Civil Misc. Application for granting exemption from filing certified copies of impugned orders dated 30.11.2016 and 12.01.2017 is allowed.

The Civil Misc. Application stands disposed of accordingly.

Civil Revision No.983 of 2017

The present revision petition by the tenant is directed against the order dated 30.11.2016 passed by the Rent Controller, Nabha whereby the defence had been struck off on account of non filing of reply on five consecutive dates. Challenge has also been raised to the subsequent order dated 12.1.2017 whereby the application for recalling or reviewing of the said order filed on the same day was dismissed.

The reasoning given by the Rent Controller, Nabha is that appearance had been put in on 21.7.2016 and in spite of repeated opportunities i.e. on 26.8.2016, 21.9.2016 and 4.10.2016, written statement had not been filed. Thereafter, on 3.11.2016, costs of ₹ 300/- was imposed which had also not been deposited which led to taking of the **basic step**.

As noticed application was filed for recalling or reviewing of order dated 30.11.2016 on the ground that there was transcription of conversation between the landlord and the tenant and that may be placed on record. The said application was rejected after taking the reply wherein it was specifically averred that the same was not maintainable nor competent neither supported by any affidavit. A revision petition was permissible but not a review application. Resultantly, the plea was rejected by the Rent Controller, Nabha and accordingly case had been fixed for evidence of the respondent/landlord.

Yesterday on 13.2.2017, counsel for the petitioner had prayed for time to seek instructions whether the tenant was willing to deposit the arrears of rent to show his bonafide. Today, a difficulty has been expressed on behalf of the tenant by the counsel.

A perusal of the ejectment application would go on to show that the eviction was sought from a shop situated at Army Chowk, Moti Bagh Colony, Nabha, District Patiala. The tenancy had been created by virtue of a rent note dated 6.3.2014. Resultantly, the rent at the rate of ₹ 7,000/- per month and arrears from March, 2015 were claimed. By virtue of not filing the reply, the tenant reduced the landlord to a beggar who has been running around for his rightful dues for the last two years.

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 applied

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."

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."

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 tenant by interfering with the well reasoned orders of the Court below.

Resultantly, the present revision petition is dismissed.

February 14, 2017
Pka

(G.S.SANDHAWALIA)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No