

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

CR No.1171 of 2015 (O&M)

Date of decision: 12.09.2018

MAHENDER KUMAR

... Petitioner

Versus

DHANSI RAM

... Respondent

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. S.K. Yadav, Advocate for the petitioner.

Mr. Arvind K. Yadav, Advocate for the respondent.

AJAY TEWARI, J. (Oral)

This petition has been filed against order dated 06.08.2014 of Rent Controller and dated 12.11.2014 of Appellate Court rejecting the application under Order 9 Rule 13 CPC.

The facts are that respondent filed a petition for ejectment against petitioner and the petitioner had engaged a counsel. Case was dismissed in default on 14.08.2006. Immediately thereafter, on 19.08.2006, an application for restoration was filed on which notice was issued and that notice was received back with the report of refusal. But nevertheless on the adjourned date i.e. 30.10.2006, another counsel appeared who filed his memo of appearance. Matter was adjourned to 11.12.2006 for filing of power of attorney. Ultimately on 24.05.2007, the case was restored because the original counsel of the petitioner had marked no objection thereon.

However, it is admitted that the second counsel did not file any power of attorney. On the very next date i.e. 14.06.2007 none had appeared on behalf of the petitioner and he was proceeded against ex parte. Ultimately, the petition was allowed on 05.08.2010. Thereafter, the instant application was filed on 10.12.2010 which was rejected on the following grounds:-

1. That service having been refused it was deemed to be effected
2. In any case, the petitioner was being represented by a counsel.

The Appellate Court having affirmed the findings, the petitioner is before this Court.

The argument of the learned counsel for the petitioner is that once the petitioner had engaged a counsel in the original ejectment petition, there was no occasion for him to have not remained present and actually no service was effected upon the petitioner when the restoration application was filed and the report of refusal is manipulated. As per the learned counsel, that is the reason why the counsel who appeared on the second date did not file a power of attorney, despite the case being adjourned for 8 to 9 months.

Counsel for the respondent has however argued that there was not only one report but there were two reports of refusal, one by wife of the petitioner and another of the petitioner himself. However, counsel for the petitioner has stated that had the petitioner been proceeded against ex parte in the original petition, it would have been different but once the petitioner

engaged a counsel in the original ejectment petition, there is no earthly reason why he would subsequently not appear. He prays for one opportunity to contest the case and argues that whatever loss has been caused to the respondent can be compensated by way of costs.

Counsel for the respondent has argued that this is a case where petitioner has not paid any rent since 1999. Counsel for the petitioner states that the petitioner would have no objection in paying the entire rent as claimed by the respondent with applicable interest.

In the totality of circumstances, I am not persuaded to dismiss the petition. Resultantly, the petition is allowed subject to the condition that petitioner shall pay the entire admitted arrears of rent along with the applicable interest thereon, i.e. ₹3,40,000/- plus costs of Rs.50,000/- (by way of draft in favour of the respondent) on the first date of appearance. Parties are now directed to appear before the Rent Controller on 15.10.2018. It is made clear that in case amount is not paid on 15.10.2018, this petition would be deemed to be dismissed.

(AJAY TEWARI)
JUDGE

12.09.2018
ashok

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No