

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

201

CR-1515-2017 (O&M)

Date of decision: 24.08.2018

VIJAY VIRMANI

...Petitioner

Versus

SAYRA

...Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Johan Kumar, Advocate for the petitioner.

None for the respondent.

REKHA MITTAL, J. (Oral)

The present petition directs challenge against order dated 29.11.2016 (Annexure P5) passed by the Appellate Authority, Faridabad whereby the appeal against order dated 09.02.2016 (Annexure P4) passed by the Rent Controller, Faridabad dismissing the application under Order 9 Rule 13 of the Code of Civil Procedure (in short 'the Code') for setting aside the ex parte eviction order dated 25.02.2012, has been allowed.

The impugned order dated 09.02.2016 was set aside and resultantly ex parte order dated 15.03.2012, ex parte eviction order dated 25.02.2012 and execution proceedings were set aside and the eviction application was restored at its original number with the opportunity to the respondent-applicant for filing written statement to defend the eviction application.

The order passed by the Rent Controller dismissing the application under Order 9 Rule 13 of the Code is not amenable to appeal

before the Appellate Authority under Section 15 of the Haryana Urban (Control of Rent and Rviction) Act, 1973 (in short 'the Act'). In this context, reference can be made to the Division Bench judgment of this Court **Tirlok Singh Anand Vs. M/s Prem Chand and Sons and others, 2013(1) RCR (Civil) 488**. Further reference can be made to judgment of this Court **Kulwant Singh Vs. Nirmal Singh, CR No.2628 of 2015, decided on 09.07.2018**. In this view of the matter, it can safely be held that the order passed by the Appellate Authority accepting the appeal preferred by the respondent and setting aside the order dated 09.02.2016 passed by the Rent Controller is void, for want of jurisdiction with the Appellate Authority to entertain much less accept the appeal. That being so, order dated 29.11.2016 passed by the Appellate Authority, Faridabad cannot be allowed to sustain and liable to be set aside on this score alone.

For the foregoing reasons, the petition is allowed. Order dated 29.11.2016 (Annexure P5) passed by the Appellate Authority, Faridabad is set aside. As a natural corollary, order dated 09.02.2016 passed by the Rent Controller, Faridabad is restored. However, the respondent shall be at liberty to take recourse to appropriate alternative remedy, in accordance with law.

No order as to costs.

24.08.2018

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No