

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

113

CR-1980-2018 (O&M)

Date of Decision : 23.03.2018

Giyanender Singh

..... Appellant

Versus

Jaipal Singh and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Shashi Kant Gupta, Advocate
for the petitioner.

AJAY TEWARI, J. (Oral)

This petition has been filed against the order of the appellate authority declining an application to restore the appeal which has been dismissed in default.

Brief facts of the case are that the respondent No.1 who is 75 years of age had filed an eviction petition against the petitioner and the respondent No.2 who is the brother of the petitioner in respect of the shop on the ground of subletting and personal necessity. The Rent Controller ordered eviction by accepting the plea of subletting as well as personal necessity. The petitioner and the respondent No.2, his brother, filed two appeals through the same counsel (as informed by the counsel for the petitioner) on 06.05.2016. Both the appeals were set down for hearing. In the first half of the day, the appellate authority noticed that the case had been called several times since morning but neither the counsel for the petitioner (and respondent No.2) nor party/s had appeared in the court. Counsel for the respondent No.1 appeared and he was requested by the court to inform the counsel for the petitioner (and respondent No.2) to

appear in the court for arguments at 11.45 AM. File was again taken up at 11.45 AM. Counsel for the respondent No.1 again appeared and stated at bar that he informed the counsel for the petitioner (and respondent No.2) that his name and case had been called number of times in the court and that the court had directed him to inform him to appear in both the case. Ultimately, both the case were dismissed in default. Two applications for restoration were filed. In both the applications it was mentioned that the petitioner and the respondent No.2 had not appeared before the court due to some personal work and nor had they informed their counsel in this regard. Further at the time of calling of appeal, their counsel was ill. When the petitioner and the respondent No.2 appeared in post lunch session, they came to know about dismissal in default of the appeal. On the next day, i.e. 07.05.2016 when the petitioner and the respondent No.2 met their counsel they came to know about the dismissal of the appeal in default. The appellate authority noticed that at one point of time they stated that when they came in the afternoon on 06.05.2016, they came to know about dismissal in default of the appeal, while at another point of time they stated that they met their counsel on 07.05.2016 and then they came to know about dismissal in default of the appeal. The appellate authority further noticed that there was a discrepancy between the stand of the petitioner and the respondent No.2 on the one hand and the counsel (who stated that he had to go out of station) on the other. The appellate authority further noticed that it was very strange that both the petitioner and the respondent No.2 gave the same reason for not being able to attend the court. The court ultimately

came to the conclusion that their non-appearance was not due to any reason which was beyond their control but was merely a tactic to delay the case which had backfired.

Counsel for the petitioner contends that as a consequence of the dismissal of appeal in default the possession has also been taken by the respondent No.1-landlord about two years ago.

I have gone through the record. I find no reason to interfere in the judgment passed by the appellate authority.

Petition is dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

March 23, 2018
ashish

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No