

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

CR No.2628 of 2015(O&M)

Date of decision:9.7.2018

Kulwant SinghPetitioner

VERSUS

Nirmal SinghRespondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Veneet Sharma, Advocate for the petitioner.

Mr. Chetan Bansal, Advocate for the respondent.

REKHA MITTAL, J.

The present petition directs challenge against order dated 04.03.2015 passed by the Appellate Authority/Additional District Judge, Amritsar whereby appeal preferred by the respondent/tenant against the order dated 09.09.2014 passed by the Rent Controller, Amritsar dismissing application under Order 9 Rule 13 read with Section 151 of the Code of Civil Procedure, 1908 (in short 'the Code') has been allowed, the impugned order dated 09.09.2014 was set aside and the respondent was granted one opportunity to tender the rent assessed by the Rent Controller, Amritsar with a direction to proceed further with the eviction application in accordance with law.

The first submission made by counsel for the petitioner is that the Appellate Authority passed the impugned order without appreciating that no appeal is maintainable against an order whereby the Rent Controller has refused to allow an application for setting aside ex parte eviction order. It is argued with vehemence that provisions of Order 9

Rule 13 of the Code are not applicable to the rent proceedings, therefore, the Additional District Judge, Amritsar has acted beyond jurisdiction by entertaining and accepting the appeal preferred by the respondent/tenant. In support of his contention, he has relied upon Division Bench judgment of this Court **Tirlok Singh Anand Vs. M/s Prem Chand and Sons and others, 2013(1) RCR (Civil) 488.**

Another submission made by counsel is that the story propounded by the respondent to create foundation for setting aside eviction order dated 20.05.2010 is highly misconceived and does not get substantiated from any documents namely diary, brief etc. maintained by counsel for the respondent to prove that a wrong date was noted which rendered the respondent unable to appear in the Court on the date fixed i.e. 20.05.2010 and tender the rent assessed by the Rent Controller on 16.04.2010. It is further argued that the respondent in his cross examination had stated that on 20.05.2010 he had gone to the Court and on that day also he had taken date from the Court and date had been noted by the Clerk of counsel.

Counsel representing the respondent/tenant has supported the impugned order. It is argued that the order passed by the Rent Controller proceeding ex parte against the respondent and passing ex parte eviction order on 20.05.2010 is amenable to challenge before the Appellate Authority under the Rent Act and has rightly been set aside on the basis of materials on record including the earlier eviction proceedings that were decided against the petitioner/landlord. In support of his contention, he has referred to Single Bench judgment of this Court **Sham Sunder and others Vs. Ravinder Nath Sharma, 2012(1) RCR (Civil) 297.** Further

reference has been made to another judgment of this Court **Ajay Partap Singh Vs. Gurdial Singh and others, 2016(2) RCR (Rent) 475** wherein it has been held that interim order determining the provisional rent is an order appealable under Section 15(1)(b) of the East Punjab Urban Rent Restriction Act, 1949 (in short 'the Act').

I have heard counsel for the parties, perused the paper-book particularly various annexures appended with the petition.

Before advertng to the submissions made by counsel for the parties, it is appropriate to note that the petitioner/landlord filed an application for eviction on the ground of non-payment of rent. The respondent/tenant caused appearance and engaged a counsel in the said proceedings. The provisional rent was assessed by the Rent Controller, Amritsar on 16.04.2010 and the case was adjourned to 20.05.2010 for payment of arrears of rent. Indisputably, order dated 16.04.2010 was passed by the Rent Controller in the presence of counsel for both the parties. On 20.05.2010, there was no representation on behalf of the respondent and resultantly the Rent Controller passed an order proceeding ex parte against the respondent and eventually passed the eviction order on account of failure of the tenant to pay provisional assessed rent along with interest and costs etc.

The respondent/tenant filed the instant application by invoking Order 9 Rule 13 read with Section 151 of the Code for setting aside the ex parte eviction order dated 20.05.2010 (Annexure P-3). The plea of the respondent/tenant is that the next date was noted by counsel as 20.07.2010 but when the applicant appeared in the Court on 20.07.2010 his case was not listed in the cause-list. On a query made from Clerk of the

Court, it came to notice of the applicant that the Court had initiated ex parte proceedings and ex parte eviction order was passed on 20.05.2010.

The primary question that falls for consideration is whether the order passed by the Rent Controller dismissing the application for setting aside ex parte eviction order dated 20.05.2010 is maintainable or otherwise. The Division Bench of this Court in **Tirlok Singh Anand's case** (supra), on a detailed consideration of notifications issued by the State of Punjab and Haryana and various judgments on the issue has finally concluded that order passed by the Rent Controller under Sections 4, 10, 12 and 13 alone are appealable in both the States of Punjab and Haryana and all other orders passed by the Rent Controller are not subject matter of appeal. Orders other than the orders which are appealable can be disputed only by way of a revision before this Court. The Division Bench has also considered judgment of Single Bench in **Sham Sunder and others' case** (supra) relied upon by counsel for the respondent. In view of dictum by Division Bench of this Court in **Tirlok Singh Anand's case** (supra), contention raised by the petitioner that the order passed by the Rent Controller refusing to set aside ex parte eviction order is not amenable to challenge before the Appellate Authority or to say that the same, at best, could be challenged by way of revision before the High Court is meritorious and worthy of acceptance. In this view of the matter, I have no hesitation to hold that the order passed by the Appellate Authority is *void*, for want of jurisdiction to entertain much less accept the appeal against order passed by the Rent Controller rejecting application of the respondent to set aside ex parte eviction order dated 20.05.2010. As the Appellate Authority did not have the jurisdiction to decide the appeal, any

observations made by the Appellate Authority qua merits of the case are of no consequence. In the given scenario, this Court need not to examine findings of the Appellate Authority qua merits of the application for setting aside ex parte eviction order. I would hasten to add that as a matter of fact, the provisions of Order 9 Rule 13 of the Code are not applicable in rent proceedings and the Rent Controller can decide an application for setting aside ex parte eviction order in exercise of its inherent jurisdiction.

For the foregoing reasons, the petition is allowed. The impugned order passed by the Appellate Authority is set aside. The respondent/tenant may avail appropriate remedy in law, if otherwise permissible. No order as to costs.

JULY 9, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no