

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

-.-

Civil Revision 2506 of 2018 (O&M)
Date of decision: 20.04.2018

M/s Boss Computers Limited

..... Petitioner

Versus

Rajinder Parshad and others

..... Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. B S Jolly, Advocate
for the petitioner

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Rekha Mittal, J. (Oral)

The present petition has been directed against order dated 17.02.2018 (Annexure P7) passed by the Rent Controller, Chandigarh whereby application for setting aside ex parte order dated 18.02.2010 (Annexure P2) and ex parte eviction order dated 05.03.2013 (Annexure P5) passed by the Rent Controller in petition No. 58 of 15.01.2007/2012 has been dismissed.

Counsel for the petitioner, in line, with the averments raised in the application (Annexure P6) would urge that as counsel for the petitioner in the eviction proceedings before the Rent Controller did not inform him about status of the proceedings and rather absented from proceedings without any intimation to the petitioner, a serious prejudice would be caused to the petitioner in case ex parte orders dated 01.02.2013 and 05.03.2013 are not set aside. In addition, it is argued that the petitioner in pursuance of order dated 18.02.2010 (Annexure P2) whereby provisional rent was

assessed by the Rent Controller, tendered rent by making a statement through its counsel on 19.04.2010 (Annexure P3). Even subsequent thereto, the petitioner has been paying rent to the respondent/landlords. Another submission made by Counsel is that even if at the time of final adjudication of eviction application, learned Rent Controller was of the view that the petitioner was still in arrears of rent, the petitioner was required to be given an opportunity to pay the rent that was found outstanding/payable, in the light of judgment of Hon'ble the Supreme Court ***Rakesh Wadhawan and Ors. v. Jagdamba Industrial Corporation and ors. (2002-2) 131 PLR 370 (SC)***.

Indisputably, the petitioner caused appearance in the eviction application and after his appearance, the Rent Controller passed order dated 18.02.2010, assessing provisional rent @ Rs.38,011.00 per month with interest at the rate of 6% per annum and costs of Rs.700.00 and case was adjourned to 19.04.2010. On that date, Counsel for the petitioner made the statement tendering a pay order and further stated about previous payment etc. Later, neither the petitioner nor his counsel appeared before the Rent Controller and as a consequence, ex parte proceedings were initiated vide order dated 01.02.2013 that culminated in eviction order dated 05.03.2013 passed by the Rent Controller. Application for setting aside eviction order was filed on 30.06.2014 (Annexure P6) after about one year and three months of passing of eviction order.

Learned Rent Controller dismissed the application with the following observations:-

“Admittedly, the defendant put appearance before the Court in the Rent Petition and paid assessed rent on

19.04.2010. The case was fixed for evidence of the plaintiff when the defendant got ex parte vide order dated 01.02.2013. From perusal of file, it is observed that approximately after about 11 months the present application is filed. It is highly unbelievable that defendants did not bother to know about the status of their case for such a long time. The applicant failed to give any reasonable explanation or ground for his absence as well as absence of his counsel.”

Article 123 of the Limitation Act, 1963 provides for limitation to set aside a decree passed ex parte or to rehear an appeal decreed or heard ex parte. The prescribed period of limitation is 30 days from the date of decree or where the summons or notice was not duly served, when the applicant had knowledge of the decree.

In the case at hand, admittedly, the petitioner caused appearance in the eviction application but later absented, therefore, the petitioner was required to file application for setting aside ex parte eviction order within 30 days from the date of passing of the eviction order. As the petitioner filed the application beyond prescribed period of limitation without an application seeking condonation of delay, application of the petitioner is clearly barred by limitation and liable to be dismissed on this score alone.

This brings the Court to plea of the petitioner with regard to its entitlement to get an opportunity to pay outstanding rent in the light of judgment in *Rakesh Wadhawan's case (supra)*, said plea is not amenable to be raised in the present proceedings or the same, at best, can be raised only in an appeal to be filed before the Appellate Authority under the Rent Act, in accordance with law, therefore, any such contention touching merits of

the controversy can not be a ground to set aside ex parte eviction order.

§ No other point has been raised.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine.

No order as to costs.

(Rekha Mittal)
Judge

20.04.2018
mohan bimbra

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No