

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 3304 OF 2018(O&M)

Date of decision: 18.05.2018

Tilak Raj (since deceased) through legal representatives	.. Petitioner
vs.	
Sukhwinder Kaur	.. Respondent

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present:- Mr. Jagjot Singh Lalli, Advocate
for the petitioner(s).

Harinder Singh Sidhu, J.

This revision petition has been filed by the petitioners impugning the order dated 19.12.2017 (Annexure P-2) passed by learned Additional Civil Judge (Senior Division) Jalandhar whereby their defence in Rent Application No. 256 dated 31.05.2016 has been struck off for failure to file the written statement.

The respondent filed a petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 for ejectment of Tilak Raj(the tenant) from the premises in question.

The petitioners are the widow, son and daughter of said Tilak Raj, who died during the pendency of the eviction petition.

Notice of the eviction petition was issued and Tilak Raj appeared on 04.08.2016 through his counsel and sought time to file the written statement. The case was adjourned to 05.10.2016. On 05.10.2016 written statement was not filed and the case was adjourned to 19.11.2016. As 19.11.2016 was declared as a holiday, so the case was taken up on 18.11.2016 and was adjourned to 22.12.2016 for filing the written statement. It is the case of the petitioners that on 22.12.2016 the lawyers at Jalandhar observed 'No Work Day', so the case was adjourned to

19.01.2017. Again written statement was not filed and the case was adjourned to 09.03.2017 subject to payment of Rs.200/- as costs. Meanwhile, Tilak Raj died on 16.01.2017. The case was adjourned to 20.04.2017 for enabling the landlord to file an application to bring on record the legal representatives of tenant (Tilak Raj) .

Vide order dated 06.07.2017 the petitioners (LRs of Tilak Raj) were brought on record and notices were issued to them for 16.08.2017. It is the case of the petitioners that even though they were not formally served, they put in appearance on 16.10.2017 and the case was adjourned to 27.11.2017 for filing written statement. On 27.11.2017 no written statement was filed and the case was adjourned to 19.12.2017. Last opportunity was granted. On that day as no reply was filed by the petitioners, the impugned order was passed. The defence of the petitioners was struck off and the case was adjourned to 05.02.2018 for evidence of the plaintiffs.

Learned counsel for the petitioners contends that the petitioners being the legal representatives of the original tenant-Tilak Raj had appeared before the Court for the first time on 16.10.2017. They had availed of only two opportunities to file the written statement. The impugned order was passed even before the expiry of 90 days from their appearance. He states that the failure to file the written statement was not intentional. The petitioners would be gravely prejudiced if they are not allowed to file the written statement. He further states that after passing of the impugned order, the case has not been progressed and only two witnesses of the plaintiff had tendered their affidavits on 16.03.2018. The case stands adjourned for their cross-examination for today i.e. 18.05.2018.

Considering the aforesaid facts and circumstances it may be in the interest of justice that the petitioners are given one last opportunity to file the written statement.

Accordingly, the revision petition is allowed. The order dated 19.12.2017(Annexure P-2) to the extent of striking off the defence of the petitioners is set aside. The learned trial court may grant one last opportunity to the petitioners to file written statement, which may be filed on or before 28.05.2018. This shall be subject to payment of Rs.20,000/- as costs, to be paid to the respondent-landlord. Payment of costs shall be the condition precedent for granting indulgence in favour of the petitioners to file the written statement.

This order has been passed without issuing notice to the respondent in order to avoid unnecessary expense and delay. A copy of this order may be conveyed to the respondent. In the event of her having any objection, she may file an application to that effect. On receipt of the application, the same be listed for hearing.

18.05.2018
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(Harinder Singh Sidhu)
Judge

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No