

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 63 of 2015(O&M)

Date of Decision:27.3.2018

Amit Sharma

---Petitioner

vs.

Harinder Kaur Sodhi

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.APS Sandhu, Advocate
for the petitioner
Mr. Gurpreet Singh, Advocate
for the respondent

Rekha Mittal, J.

The present petition directs challenge against order dated 9.9.2014 passed by the Appellate Authority, Patiala whereby application under Section 5 of the Limitation Act for condonation of delay of 16 days in filing the appeal against eviction order passed by the Rent Controller dated 9.12.2013, has been dismissed.

Counsel for the petitioner would argue that respondent-landlady filed an application for eviction against the petitioner on the ground of non-payment of arrears of rent from 1.10.2008 to 30.9.2009 @ Rs. 650/- per month, from 1.10.2009 to 30.9.2010 @ Rs. 700/- per month and from 1.10.2010 to 31.5.2011 @ Rs. 750/- per month.

The Rent Controller, vide order dated 16.12.2011 assessed provisional rent @ Rs. 500/- per month from 1.10.2008 to 31.5.2011 alongwith interest and costs. The petitioner deposited a sum of Rs. 23,600/- including interest and costs on 9.3.2012 received by the respondent under protest. The Rent

Controller finally decided the eviction application and passed order dated 9.12.2013 (Annexure P-2) whereby final rent payable by the petitioner was assessed as detailed in sub para vii of para 2 of the revision petition, total Rs. 25,850/-.

The petitioner is a very poor person. He moved an application before the District Legal Services Authority for providing him legal aid counsel for the purpose of filing an appeal against the eviction order passed by the Rent Controller. Ms. Nisha Rishi, legal aid counsel was provided for filing an appeal against order dated 9.12.2013. Due to formalities of providing free legal aid to the petitioner, there was delay of 16 days in filing the appeal.

Petitioner filed application under Section 5 of the Limitation Act for condonation of delay of 16 days in filing the appeal alongwith the grounds of appeal. It is argued with vehemence that the appellate authority dismissed the application for condonation of delay vide order dated 9.9.2014 but without adverting to contentions of the petitioner constituting sufficient cause for condonation of delay of 16 days in filing the appeal. It is further argued that appellate authority was swayed by the factum of respondent having got possession of the demised premises in execution of the eviction order as there was no stay by the appellate authority. It is argued with vehemence that even if the respondent was successful in securing possession of the tenancy premises for want of stay by the appellate court as the application for condonation of delay was pending decision, the same can not form the basis for dismissal of application for condonation of delay. In addition, it is argued that in case the application for condonation of delay is decided on merits and is allowed and the appeal is heard on merits and eventually comes out to be successful, the petitioner would be entitled to take recourse to appropriate remedy for restitution of possession of tenancy premises in accordance with law.

Counsel representing the respondent has supported the impugned

order with the submission that the appellate authority has taken into consideration various factors and delivery of possession of tenancy premises in favour of the respondent is one of them. It is further argued that after recovering possession, the respondent has further leased out the property, therefore, in case the impugned order is set aside it would lead to complications even for the person who is not privy to the litigation.

I have heard counsel for the parties, perused the paper book particularly the order impugned.

A relevant extract from para 6 of the order impugned, reads as follows:-

“Further when the appeal was already pending in the Court since 14.1.2014 and the warrant of possession was issued and executed on 20.3.2014 then it was required for the appellant to bring this document to the notice of this Authority for seeking appropriate relief. But no such effort was made. It appears that the appellant had voluntarily abandoned the possession of the shop in question. As observed above, no rent was paid after passing of the impugned order. In this view of the matter, when the whole process has been completed and the appellant has been sleeping on his rights and did not bother to bring the development of issuing the warrant of possession to the notice of this Authority, then the entire process which has been taken place and stood completed in pursuance of the orders of the leaned Rent Controller can not be reversed or steered back by allowing the application for condonation of delay. The relationship of landlord and tenant had not only come to an end by passing of the order of eviction, but also the said order was duly executed by a due process of law. No step was taken by

the applicant/appellant during this entire period. Therefore, in the considered opinion of this Court the appellant can not be granted any relief of condonation of delay by putting the respondent/landlord to a grave hardship as it would amount to setting aside the order even after it was executed. This Authority is of the opinion that no relief under the Rent Act is available at this juncture to the appellant/applicant. As such the application for condonation of delay is dismissed. Resultantly the appeal is also dismissed. File be consigned to the record room.”

Perusal of the aforesaid extract leaves no manner of doubt that the appellate authority has not at all adverted to contentions raised in the application for condoning delay of 16 days in filing the appeal nor recorded any finding that there is no sufficient ground for condoning delay. As per the settled position in law, the Court while dealing with an application for condonation of delay is not to adopt a pedantic approach and has to take a liberal view so that meritorious claim is not rejected at the threshold. The expression 'sufficient cause' employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of Courts. The mere fact that during pendency of the appeal, the respondent is successful in securing possession of tenancy premises for want of stay in favour of the petitioner can not a ground to reject the application and consequently the appeal. Conversely, in case the application for condonation of delay is allowed and appeal is also found to be meritorious, the petitioner would well be within his right to take recourse to appropriate remedy for restitution by invoking the relevant provisions in the Code of Civil Procedure or inherent jurisdiction of the Rent Controller. In this view of the matter, I find merit in contention of the petitioner that the impugned order suffers

from grave error and cannot be allowed to sustain.

For the foregoing reasons, the petition is allowed. The impugned order is set aside and the matter is remitted to the appellate authority for decision of the application under Section 5 of the Limitation Act afresh by hearing the parties, in accordance with law. The parties through their counsel are directed to appear before the appellate authority on 20.4.2018.

Disposed of accordingly.

(Rekha Mittal)
Judge

27.3.2018

paramjit

Whether speaking/reasoned: Yes

Whether reportable : Yes/No