

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 4206 of 2017

Date of Decision: 19.03.2019

Bhupinder Singh @ Happy

.....Petitioner

Vs.

Col. Manmohan Singh Bains (Retd.)

.....Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Gaurav Goel, Advocate,
for the petitioner.

Mr. Raman Mahajan, Advocate,
for respondent no. 1.

AMOL RATTAN SINGH, J. (ORAL)

By this petition, the petitioner challenges two orders of the learned execution Court [Civil Judge (Junior Division), Chandigarh], both dated 24.10.2016 (collectively annexed as Annexure P-1 with the present petition), the first of which states that with neither the objector, i.e. the present petitioner, nor his counsel having turned up, no evidence had been led by him, further noticing from the record of the case file that a last opportunity of hearing was granted to him to conclude his evidence, with him also having been burdened with costs of Rs. 500/-, with those also remaining unpaid.

Consequently, due to non-payment of costs and on account of the earlier order dated 18.10.2016 (by which a last opportunity had been granted to lead his evidence), his evidence stood closed “by order”.

The said order also refers to the other order passed on the same date

(as is also impugned in the present petition), to state that the objection itself stands dismissed.

A perusal of the order dismissing the objection shows that after noticing the facts given in the objection application by the petitioner, in detail, as also the reply filed thereto, the following two issues (essentially one), were framed by that Court:-

*“1. Whether objector Bhupinder @ Happy is tenant under Sh. Gagandeep Goel in the demised premises?
OPP*

2. Relief.”

Thereafter, the 'objection application' has been dismissed by observing as follows:-

“Onus to prove this issue was on the objector. Despite availing six effective opportunities, no evidence was brought forth by the objector. When no reasonable justification came forth, evidence of the objector was closed by order. So, it is clear that there is no evidence on record to substantiate the plea of objector taken in the objection petition. Hence, this issue is decided against the objector and in favour of the DH.

In view of my detail discussion on issue no. 1, I am of the considered view that since there is no evidence on record to substantiate the pleas taken by the objector in his objection petition, as such the same stands dismissed with no order as to cost.”

Hence, it is obvious that the objections have been dismissed essentially on the ground that no evidence was led to prove such objections, by the petitioner.

Those orders having been appealed against on 30.11.2016, the appeal

was dismissed on 24.05.2017, which is the 3rd order impugned in the present petition.

A perusal of the said order shows that after considering the pleadings of the parties and the arguments raised before that Court, it was observed that the case had remained pending for a long time, for the objector to lead evidence before the execution Court, with it having been adjourned for the purpose of leading evidence on 10.03.2016 and 16.03.2016, after which also no evidence was led and consequently, the execution Court had not erred in dismissing the objections (on 24.10.2016).

Hence, holding that though provisions of procedural law are to be construed liberally to achieve the ends of justice but no party can be permitted to abuse the process, the appeal was also dismissed.

Before this Court, in fact no reason whatsoever is being given by learned counsel even to justify his non-presence before the execution Court, other than to say that his counsel noted the wrong date on the last date of hearing before that Court.

He also submits that non-presence of counsel before the execution Court should not be a reason for penalizing the petitioner.

On query as to why, even if his counsel did not appear, the petitioner himself did not appear as he was to testify in support of his objections, there is no answer forthcoming, whatsoever.

Even so, though otherwise there would be absolutely no reason whatsoever to allow this petition, however, simply for the reason that a person should not be condemned unheard, this petition may be allowed, in the opinion of this Court, subject to the petitioner paying commensurate costs to the respondent/land-lord for delaying execution proceedings unnecessarily.

Consequently, the petition is allowed subject to payment of Rs. 30,000/- as costs to the respondent within a period of 15 days from today, after which the learned execution Court would grant three opportunities within one month to the petitioner to lead his evidence and if he does not conclude his evidence within that period (naturally subject to any time taken by the respondent with regard to cross-examination etc.), this order shall be deemed not to have been passed and this revision petition, in such a situation, deemed to have been dismissed.

March 19, 2019
nitin/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes