

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No. 113

Case No. : C. R. No. 2565 of 2019

Date of Decision : May 07, 2019

Sandeep Singh .... Petitioner

vs.

Vijay Kumar .... Respondent

**CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.**

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Present : Mr. Ishaan Singh, Advocate  
for Mr. Rajesh Kapila, Advocate  
for the petitioner.

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**DEEPAK SIBAL, J. (Oral) :**

The present petition is directed against the order dated 01.04.2019 passed by the Civil Judge (Junior Division), Gurdaspur (for short – the Executing Court) dismissing the application filed by the petitioner for setting aside the ex-parte proceedings against him.

The facts, in brief, which would be required to be noticed for adjudicating upon the present petition, are that the petitioner was a tenant in a shop, of which the respondent was the landlord. Such shop was rented out to the petitioner for running a laboratory at a monthly rent of Rs.13,000/-. In the year 2013, a petition was preferred by the respondent seeking therein the petitioner's eviction on the ground of non-payment of rent as also for the reason that the petitioner had caused harassment to the respondent as he had

registered a false and frivolous FIR against the respondent and his son with

the sole object of grabbing the tenanted premises. In the respondent's eviction petition, The Rent Controller, Gurdaspur assessed the provisional rent but since the petitioner failed to pay the same, the Rent Controller, Gurdaspur, through order dated 27.11.2015, ordered the petitioner's eviction. Against such eviction order, the petitioner filed an appeal which was dismissed by the Appellate Authority, Gurdaspur on 19.04.2017. The petitioner then knocked the doors of this Court through **CR No. 3872 of 2017 - Sandeep Singh vs. Vijay Kumar**, which was not pressed on merits. Learned counsel appearing on behalf of the petitioner prayed that the petitioner be granted some reasonable time to vacate the tenanted premises, which this Court was inclined to grant, of course, subject to payment of arrears of rent as also future rent for the period he occupied the tenanted premises. When this offer was put to the petitioner, who was present in the Court, he submitted that he was not in a position to pay the arrears of rent as also future rent and therefore, his petition was dismissed. Thereafter, the respondent filed an execution petition before the Executing Court, in which the petitioner was served but since he failed to appear before the Executing Court, he was proceeded against ex-parte. Thereafter, he filed an application seeking to set aside the ex-parte proceedings which has been dismissed through the order challenged in the present revision petition.

Learned counsel for the petitioner has been heard.

Through order dated 27.11.2015, the Rent Controller,

Gurdaspur ordered the petitioner's eviction from the tenanted premises as he

had failed to deposit the assessed provisional rent. Against the aforesaid eviction order, the petitioner filed an appeal, which was dismissed by the Appellate Authority, Gurdaspur on 19.04.2017. Thereafter, the petitioner approached this Court through CR No. 3872 of 2017 - Sandeep Singh vs. Vijay Kumar which petition was not pressed on merits. A prayer was made by the learned counsel for the petitioner to grant him some time to vacate the tenanted premises. This Court was inclined to grant the petitioner some time, of course, subject to payment of arrears of rent as also future rent for the period he occupied the tenanted premises. The petitioner specifically refused to pay the arrears of rent or future rent occasioning the dismissal of his petition. Thus, the petitioner's eviction from the tenanted premises attained finality. In view of such fact as also for the reason that he had refused to pay either the arrears of rent or future rent for the period he occupied the tenanted premises, the petitioner has no right to occupy the tenanted premises.

Even otherwise, the order, through which the petitioner's application for setting aside the ex-parte proceedings against him before the Executing Court was dismissed, warrants no interference. It is the petitioner's case that after being served, he had appeared before the Executing Court on 20.10.2017 but found that the Presiding Officer was on leave. The Executing Court rejected the petitioner's plea on the ground that 20.10.2017 was a holiday. Therefore, there was no question of the presiding Judge being on leave on that day. Had the petitioner come to the Court on 20.10.2017, he would have certainly come to know that on that

day, there was a holiday. Like any prudent man, he would have then found out the fate of his case on the next working day. However, he did not do so. In fact, he filed his application to set aside the ex-parte proceedings only on 17.07.2018 i.e. after about nine months. The petitioner admittedly took no steps to find out as to what happened to his case for nine months after 20.10.2017 For such lapse on his part, it is only he who should suffer.

It is further the case of the petitioner before the Executing Court that he came to know about the ex-parte proceedings through the Bailiff who came to execute the warrants of possession. The Executing Court has rightly observed that such plea taken by the petitioner is also false as the job of the Bailiff was only to execute the warrants of possession. He did not have the order through which the petitioner was proceeded against ex-parte and therefore, could not have informed the petitioner with regard to such fact.

In view of the above, there is no merit in the present petition and the same is hereby dismissed.

( DEEPAK SIBAL )  
JUDGE

May 07, 2019  
*monika*

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| Whether speaking/reasoned ? | Yes/No. |
| Whether reportable ?        | Yes/No. |