

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 2910 of 2019

Date of Decision: 08.05.2019

Rakesh Kumar @ Raju

.....Petitioner

Vs.

Naveen Verma

.....Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Shiv Kumar, Advocate,
for the petitioner.

Mr. Nimanyu Gautam, Advocate,
for the respondent.

AMOL RATTAN SINGH, J. (ORAL)

The day before yesterday, i.e. on 06.05.2019, the following order was recorded:-

“Learned counsel for the petitioner submits that on the date that the rent was to be tendered before the Rent Controller, i.e. 17.8.2018, the Bar Association had passed a resolution to abstain from work on account of the passing of Shri Atal Bihari Vajpayee, former Prime Minister of India. A copy of the Bar Association Jalandhar to that effect has been annexed as Annexure P-3 along with the petition.

He submits that even when the appeal was filed, a demand draft for the outstanding amount of rent of Rs.18,000/- was annexed therewith, a copy of which has been produced in Court today, showing it to be dated 26.9.2018.

He further submits that the amount being only Rs.18,000/-, actually it was to be paid in cash on 17.8.2018 but on account of the fact that the lawyers were abstaining

from the work, it was not paid in Court on that date, with the order for eviction having been passed by the trial Court on that very date.

On query as to why the petitioner could not be personally present himself to tender the rent, he submits that he is 'only a tea shop vendor', not expecting the Bar to have gone on strike and therefore not being present in Court.

Notice of motion.

Mr.Nimanyu Gautam, Advocate, appears for the respondent and has filed his power of attorney which is taken on record.

On the other hand, learned counsel for the respondent has drawn attention to paragraph 13 of the judgment of the learned appellate authority, wherein after holding that the Rent Controller had no authority except to pass an order of eviction due to non-payment of rent, it is noticed that presuming that the District Bar Association, Jalandhar, was abstaining from work on 17.8.2018, the petitioners' (tenants') contention that he could not tender the rent personally, was that he was unwell, with no medical evidence produced to that effect.

He further submits that as a matter of fact the appeal against the order passed by the Rent Controller on 17.8.2018 was instituted on 4.1.2019 and therefore the contention that the demand draft dated 26.9.2018 had been annexed with the appeal, is a wholly incorrect averment.

For Mr.Shiv Kumar to explain the aforesaid, adjourned to 8.5.2019.

To be shown in the urgent list.”

Today, learned counsel for the petitioner having submitted that the appeal was filed by the petitioner before the appellate authority within 33 days and not on January 04, 2019, learned counsel does not dispute the aforesaid contention.

Learned counsel for the respondent however submits that the

petitioner having annexed with his appeal before the appellate authority, a demand draft/bankers cheques as regards the outstanding arrears of rent only on 26.09.2018, does now show his *bona fides* as regards his willingness to immediately pay the rent, because if he was genuinely in a position to pay that rent and it was simply not paid because lawyers were abstaining from work on 17.08.2018, i.e. the date on which he was ordered to be evicted by the Rent Controller, the draft could have been prepared within a day or two at the most, to show such *bona fides*.

The draft however having been prepared one month and nine days after the eviction was ordered, even though the respondent/land-lord did not seriously oppose the application seeking condonation of delay of 03 days in filing the appeal, that does not absolve the responsibility of the petitioner-tenant to ensure that the rent was paid immediately after 17.08.2018.

On the issue of eviction of a petitioner due to non-payment of rent even after he had been granted time to do so, he cites two judgments of co-ordinate Benches of this Court in Madan Lal and another vs. Baldev Raj 2004 (2) RCR (Rent) 93 and Union of India and others vs. Harjinder Kaur 2011 (10) RCR (Civil) 259.

In rebuttal, Mr. Shiv Kumar, learned counsel for the petitioner, reiterates what he had said on the last date of hearing, further submitting to the effect that the petitioners' *bona fide* are duly proved by way of the demand draft prepared and annexed along with the appeal itself, and simply because lawyers were abstaining from work on 17.08.2018 and due to that he was not able to pay the rent, that was no ground to order his eviction.

He further submits that it is only a small premises measuring 10 fit x 08 fit in all, with the petitioner running a tea stall from there, he thus being a very

small tea vendor.

Learned counsel for the respondent interjects to say that as a matter of fact the petitioner is also running another shop in front of the demised premises and therefore, the aforesaid contention is only made to gain the sympathy of the Court.

Having considered the matter, as regards the last contention raised by learned counsel for the respondent, this Court would not go into that question because the ground for eviction is not on that basis but on ground of on non-payment of rent, though possibly that would be a factor which would influence any Court to determine the *bona fides* of any party to a *lis*. Yet, the fact that the petitioner first took a stand before the appellate authority that the rent could not be paid on the date that eviction was ordered (17.08.2018) because he was unwell, with no medical evidence to support that; and further, the demand draft for the outstanding arrears of rent being of a date one month and nine days after the eviction was actually ordered, the fact that lawyers were abstaining from work on that date, in my opinion, would not help the petitioner in any manner, because obviously he was not debarred from appearing before the trial Court himself to pay the said rent.

Consequently, keeping in view the aforesaid circumstances, I would find no ground to interfere with the judgments of the learned courts below. This petition is consequently dismissed.

May 08, 2019
nitin

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
No.