

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR No. 3791 of 2019(O&M)

Date of decision: 31.5.2019

Sukhpal Singh Grewal

.....Petitioner

VERSUS

Harjit Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. G.S. Dhaliwal, Advocate for the petitioner.

REKHA MITTAL, J.

Challenge in the present petition has been directed against orders dated 21.08.2015 (Annexure P-4) passed by the Rent Controller, Ludhiana allowing application under Order 9 Rule 13 of Code of Civil Procedure, 1908 (in short 'CPC') and dated 17.05.2019 (Annexure P-6) by the Additional District Judge, Ludhiana dismissing the appeal as withdrawn.

The petitioner filed an application under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (in short 'the Act') for ejectment of the respondent from one flat, detailed in headnote of eviction application and the same was allowed ex parte vide order dated 16.03.2013 by the Rent Controller, Ludhiana.

The respondent/tenant filed application under Order 9 Rule 13 CPC for setting aside ex parte eviction order dated 16.03.2013 and the same was allowed by the Rent Controller, Ludhiana vide impugned order dated 21.08.2015. The appeal preferred by the petitioner against the order

of Rent Controller, Ludhiana was dismissed as withdrawn vide order dated 17.05.2019 passed by the Additional District Judge, Ludhiana.

Counsel for the petitioner would argue that the respondent caused appearance in the eviction proceedings through Sh. G.S. Arora, Advocate on 03.10.2012 and subsequent thereto, case was adjourned on several occasions but the respondent failed to file reply. The respondent was proceeded against ex parte vide order dated 28.01.2013 and the case was adjourned to 01.03.2013 for ex parte evidence and was eventually decided vide order dated 16.03.2013. It is argued with vehemence that since the respondent caused appearance in October 2012 but later absented from the proceedings on 28.01.2013 and thereafter the case remained pending for about 1½ months, the trial Court has seriously erred in holding that there are sufficient grounds to set aside the ex parte order dated 16.03.2013. It is further submitted that failure of the respondent to file reply despite the case being adjourned on number of occasions and thereafter absenting from the proceedings speaks volumes about his mala fide conduct to delay the eviction proceedings on one pretext or the other. It is further argued that reasons assigned by the trial Court for setting aside the eviction order are contrary to the grounds set up in the application wherein the respondent had raised the plea that his counsel had gone to the Court concerned on 28.01.2013 and 01.03.2013 and on 16.03.2013, it was strike by lawyers on account of Saturday.

I have heard counsel for the petitioner, perused the paper-book particularly the order impugned. A relevant extract from order dated 21.08.2015, in respect of facts on record, reads as follows:-

“9. Present application has been filed to set aside an exparte eviction order dated 16.03.2013 passed by my learned Predecessor. Said file was summoned from the record room. Perusal thereof shows that Sh. G.S. Arora Advocate had filed power of attorney on behalf of respondent on 03.10.2012 and case was adjourned to 18.10.2012 for filing the reply. On 18.10.2012 reply was not filed and case was adjourned to 09.11.2012 for filing the reply. However on 09.11.2012 Ld. Presiding Officer was on medical leave and case was taken up by the Duty Judge and case was adjourned to 01.12.2012. On last mentioned date the case was again put up before the Duty Judge. As the Presiding Officer was again on leave and case was adjourned to 19.12.2012. However Ld. Presiding Officer took up the case file on 18.12.2012 in the absence of the parties on the ground that he was to be on leave on 19.12.2012 and accordingly case was adjourned to 19.01.2013. Again instead of 19.01.2013 the file was taken up on 17.01.2013 in the absence of the parties by Ld. Presiding Officer. As he was to be on leave on 19.01.2013. Accordingly the case was adjourned to 27.01.2013 for the purpose already fixed. File was again not taken up on the date fixed i.e. 27.01.2013 as it was Sunday/Holiday. File was taken up on 28.01.2013 by my learned Predecessor and the respondent was proceeded ex parte and case was posted for 01.03.2013 for exparte evidence. Above said discussion shows that after 18.10.2012

the case was adjourned to 09.11.2012, 01.12.2012, 18.12.2012, 17.01.2013 and 27.01.2013. However on account of Presiding Officer being on leave on these dates the file was taken up by the Duty Judge on 09.11.2012 and 01.12.2012. Then on subsequent dates i.e. 19.12.2012, 19.01.2013 and 27.01.2013 the file was taken up by Ld. Presiding Officer not on the above said dates but on day before the above said dates. As the Presiding Officer was to be leave on 19.12.2012, 19.01.2013. When the file was taken up on 18.12.2012 instead of 19.12.2012 and 17.01.2013 instead of 19.01.2013. Then the case was required to be adjourned for proper orders. Thus when on 17.01.2013 the file was taken up on account of Presiding Officer being on leave on 19.01.2013 and the case was adjourned to 27.01.2013. Then the said adjournment was to be for proper order to be passed by the court on 27.01.2013. Instead 27.01.2013 was Sunday. As the case infact was inadvertently got fixed on Sunday. So the file was accordingly taken up on next working day i.e. 28.01.2013 and a proper order was to be passed. As earlier the case was pending for filing the reply. So on 28.01.2013 the case was to be posted for filing the reply. However on 28.01.2013 none appeared for the respondent and the respondent was proceeded exparte. Thus the respondent was proceeded exparte not on the day given to the respondent i.e. 27.01.2013. But respondent was proceeded exparte on next day i.e.

28.01.2013. It has certainly prejudiced the respondent. It is a settled principle of law that act of court should not prejudice anyone.”

Counsel for the petitioner has not disputed that on many dates fixed in the case, the Presiding Officer was not holding the Court for one reason or the other and the case was taken up either before the date fixed or subsequent thereto, therefore, the respondent cannot be condemned or attributed any fault for the same. On 18.12.2012, the case was adjourned to 19.01.2013 and was taken up on 17.01.2013 on account of Presiding Officer being on leave and was adjourned to 27.01.2013 that was Sunday. The case was taken up on 28.01.2013 and the respondent was proceeded against ex parte. The ex parte eviction order was passed on 16.03.2013. On the said date the lawyers were stated to be not attending the Court on account of Saturday. The petitioner, in reply to para 4 of the application containing allegations of lawyers being on strike on 16.03.2013, has not specifically denied those averments and the same amounts to admission on the part of petitioner. The trial Court has rightly held that no one should be permitted to suffer on account of negligence/lapse on the part of his counsel. In this context, reference can be made to judgments of Hon’ble the Supreme Court **Rafiq and another Vs. Munshilal and another, AIR 1981 SC 1400** and **Smt. Lachi Tewari and others Vs. Director of Land Records and others, AIR 1984 SC 41**. In this view of the matter, I find myself unable to accept contention of the petitioner that order impugned passed by the Rent Controller merits interference, in exercise of extraordinary jurisdiction under Article 227 of the Constitution of India.

In view of what has been discussed hereinbefore, finding no merit, the petition fails and is accordingly dismissed in limine.

MAY 31, 2019

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned

:

yes/no

Whether reportable

:

yes/no