

CR-4501 of 2019 (O&M)

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

CR-4501 of 2019 (O&M)
Date of decision: 22.07.2019

Haryana Diary Development Coop. Federation Ltd.

.....Petitioner

versus

Surinder Kaur

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Lokesh Sinhal, Advocate, for the petitioner.

RAMENDRA JAIN, J. (ORAL)

Petitioner-Federation has preferred instant revision against order of the trial Court dated 27.05.2019, whereby its application under Order 9 Rule 13 read with Section 151 of the Code of Civil Procedure for setting aside ex parte order of the Rent Controller dated 31.01.2014 was rejected.

Briefly, respondent-landlord filed eviction petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 against the petitioner. Notice of the same was served upon the petitioner through its receipt clerk. But it chose not to contest the eviction petition. Therefore, finding no option, Rent Controller proceeded ex parte and allowing aforesaid eviction application of the respondent, ordered eviction of the petitioner-Federation vide order dated 31.01.2014. Thereafter, petitioner-Federation filed an application under Order 9 Rule 13 read with Section 151 CPC for setting aside aforesaid ex parte order, which after framing issues, recording evidence of both the sides to their satisfaction and holding trial

CR-4501 of 2019 (O&M)

was dismissed vide order dated 27.05.2019.

Learned counsel for the petitioner *inter alia* contends that learned Rent Controller erred in not considering the statement of AW2 Harpinder Kaur, Receipt Clerk (at some places wrongly typed as Harminder Kaur), who categorically testified that she never received any summons against the eviction petition of respondent. As soon as petitioner-Federation came to know about the ex parte eviction order dated 31.01.2014 from one of the landlords of the demised premises, it immediately within limitation filed application under Order 9 Rule 13 CPC. Learned Rent Controller also erred in non-suiting the petitioner-Federation without affording an opportunity to it to prove its case on merits.

Having given thoughtful consideration to the submissions made by learned counsel for the petitioner, this Court finds the instant revision completely devoid of any merit for the reasons to follow.

No question of law much less substantial has been raised in this revision.

This Court while exercising its revisional powers has very limited jurisdiction, which can only be exercised, (i) when the Courts below have acted beyond jurisdiction vested in them or (ii) have not exercised the same diligently and (iii) have exercised illegally.

Learned counsel for the petitioner has not been able to show any such infirmities in the order of the trial Court.

Statement of AW2 Harpinder Kaur, Receipt Clerk, has rightly been ignored by the learned Rent Controller inasmuch as petitioner-Federation being her employer was in dominant position. Therefore, to save

CR-4501 of 2019 (O&M)

her employment or any harassment from her superiors, AW2 Harpinder Kaur, Receipt Clerk, was duty-bound to act according to the dictates of her seniors and to depose falsely in Court. However, despite her examination, petitioner-Federation could not stand to the test of their truthfulness for the following reasons: -

- (i) Receipt register was manipulated or forged by the petitioner-Federation as is clear from the findings of the learned Rent Controller in the impugned order that receipt register Ex.A1 produced by the petitioner-Federation proved by its officer AW1 Dinesh Mahajan though started from 14.08.2013, but did not bear entries pertaining to receipt of correspondence (*dak*) by the department on 14.08.2013, on which date notice of the eviction petition was received in its office;
- (ii) RW1 Rajesh Kumar, Naib Nazar, proved relevant pages of the summons and dispatch registers for the relevant period as RW1/1 and RW1/2. RW2 Kulwinder, Nazar, proved on record forwarding of summons as RW2/1.

It is undisputed that receipt of summons was acknowledged by Harpinder Kaur by her signature apart from affixing official seal of the petitioner-Federation. Dinesh Chauhan, Process Server, specifically proved that summon was delivered to Harpinder Kaur, Receipt Clerk.

Considering above material aspects, learned Rent Controller has rightly observed that in case summons were not served upon any official of the petitioner-Federation, how Dinesh Chauhan, Process Server, then

CR-4501 of 2019 (O&M)

came to know about the name of its aforesaid Receipt Clerk. Petitioner could not rebut evidence led by respondent-landlord that it had due notice of the eviction petition filed by her against it, but despite that it did not choose to contest the same.

Since petitioner-Federation was proceeded ex parte on 31.01.2014 and filed application under Order 9 Rule 13 CPC after eleven months, therefore, same has rightly been dismissed being hopelessly time-barred.

I have gone through the impugned order and find no illegality or perversity in the same.

Dismissed.

July 22, 2019
R.S.

(Ramendra Jain)
Judge

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No