

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

1. CR-447-2020 (O&M)
Date of decision : 24.11.2020

Nobel Malik

...Petitioner

Versus

Hanumant Kumar

...Respondent

2. COCP-1993-2020 (O&M)
Date of decision : 24.11.2020

Hanumant Kumar

...Petitioner

Versus

Nobel Malik

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Vikas Kuthiala, Advocate for the petitioner
(In CR-447-2020)
for respondent (In COCP-1993-2020)

Mr. Sakal Suri, Advocate for the petitioner
(In COCP-1993-2020)
for the respondent (In CR-447-2020)

ANIL KSHETARPAL, J.

By this order, CR-447-2020 and COCP-1993-2020 shall stand disposed of. The tenant has filed a civil revision petition against the order passed on 31.10.2019 by the Rent Controller while dismissing application

under Order 9 Rule 13 CPC which has also been affirmed in the appeal by the Appellate Authority on 16.01.2020. Whereas the petition for initiation of contempt proceedings has been filed by the landlord alleging that the tenant has violated statement given by his counsel, noticed in the interim order dated 17.06.2020.

Some facts are required to be noticed. The landlord sought eviction of the tenant from the tenanted premises by filing a petition under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter to be referred as “the Act of 1973”) on various grounds including his bonafide requirement. The petitioner-tenant received summons for 21.09.2016. He is alleged to have engaged Sh. Harish Malhotra, Advocate to defend him in the eviction petition filed by the landlord. A written statement contesting the eviction proceeding was filed on 11.01.2017. The case was fixed for leading evidence. The landlord filed his affidavit in evidence on 01.02.2017 . Thereafter, the case was adjourned to 22.02.2017 in order to give opportunity to the learned counsel representing the tenant to cross-examine the landlord. On 18.04.2017, the case was once again adjourned, giving last opportunity to the counsel representing the tenant to cross-examine the landlord. However, on 03.05.2017, neither the petitioner nor his counsel appeared, forcing the Court to proceed against the petitioner ex parte. Consequently on 22.09.2017, the Ex parte judgment ordering eviction of the petitioner from the tenanted premises was passed. The petitioner filed an application under Order 9 Rule 13 CPC on 22.12.2017. After framing of the issues, the parties were permitted to lead evidence. The petitioner apart from examining himself also examined Ram

Bilas, Clerk of Sh. Harish Malhotra, Advocate. He also examined a clerk from Haryana Urban Development Authority.

On the other hand, the landlord himself appeared in evidence.

Learned Rent Controller dismissed the application after appreciating the evidence. It was found that the petitioner has failed to make out a case for setting aside of ex parte judgment. The Court discussed the evidence of Ram Bilas, Clerk of the Counsel in detail. It was found that he was not worthy of reliance. He stated that after filing of the written statement, Sh. Harish Malhotra told the tenant-petitioner not to physically come to the Court and he will be informed whenever his physical presence would be required. It has further been stated that the case file as well as the diary maintained by the counsel was lost by Sh. Harish Malhotra. Therefore, they could not contact the petitioner or attend the hearing. The Court noticed that the petitioner has failed to produce his counsel in evidence and the evidence of the clerk does not inspire confidence.

The tenant filed appeal which was also dismissed by the Court on re-appreciation of evidence. That's how this revision petition has been filed.

This Court has heard learned counsel for the parties at length and with their able assistance perused the paper book.

Learned counsel for the petitioner has submitted that the petitioner had engaged a counsel to defend him in the eviction petition. It was, on his direction, the petitioner stopped coming to the court to attend the proceedings. Hence, he submitted that the Court ought to have issued notice to him, once it was found that his counsel has stopped appearing. He

submitted that the petitioner should be given an opportunity to defend the proceedings. He further submitted that the eviction petition itself was not maintainable as the Act of 1973 is not applicable to the building in question in view of provision of Section 1(3) of the Act of 1973. He while elaborating submitted that the occupation certificate of the tenanted premises was issued on 03.11.2008 whereas the petition has been filed on 24.08.2016. Hence, as per Section 1(3), the provisions of the Act are not applicable to newly constructed building for a period of 10 years.

On the other hand, learned counsel appearing for the respondents has contended that the petitioner did not examine his counsel in evidence, therefore, adverse inference is to be drawn against the petitioner. It is further contended that these days, the proceedings/daily orders can be seen by the party on the website of the court and the party can very well monitor the proceedings without physically coming to the Court . It is contended that the tenanted premises is a commercial property situated in National Capital Region of the Country and the petitioner admits that he knows Hindi and English languages. He contends that the petitioner was thoroughly negligent and hence, not entitled to any indulgence.

This Court has analyzed the arguments of learned counsel and finds that there is no scope for interference in the revision petition. Both the Courts on appreciation of evidence have concurrently found that the evidence of Ram Bilas, Clerk of the counsel, is not worthy of placing reliance. Correctness of such finding arrived at by the courts below have not been challenged by learned counsel for the petitioner. Learned counsel for the petitioner has failed to show that such finding suffers from any error

or perversity. In absence thereof, it is apparent that the petitioner has failed to prove sufficient cause for his absence. No doubt, the petitioner did promptly file the written statement, however, thereafter, neither he nor his counsel came forward to attend the proceedings. The Court granted last opportunity to the petitioner to cross-examine the witness. However, no steps were taken by the petitioner. In these circumstances, the Court was left with no choice but for to proceed ex parte against him. It may be noted here that from the date of filing of the written statement i.e. on 11.01.2017, the proceedings remained pending for 8 ½ months. A party to the litigation is expected to remain vigilant and it was his duty to keep an eye on the proceedings. The petitioner does not claim that he is illiterate, rather, admits that he knows both languages- English and Hindi.

In these circumstances, once he had engaged lawyer, it was expected of him to get regular update from his counsel or his clerk and if they failed to provide him update, he should have been vigilant and cross-checked the status of the case from the court website or by physically visiting the Court.

In these circumstances, there is hardly any scope for interference particularly when two Courts have already dismissed the application. The scope of revisional jurisdiction in such circumstances is limited and in absence of perversity or substantive error, the revisional Court cannot be expected to interfere.

Next argument of learned counsel is with regard to non-applicability of the Act of 1973. Although attractive on the first blush, however, found to be without substance on deeper scrutiny.

In any case, even if the petition under the Rent Act was not maintainable, a suit for possession after terminating the tenancy was very much maintainable before the Civil Court. In that case, the landlord was not required to prove his bona fide necessity. In State of Haryana, the Civil Court has the jurisdiction to try civil suit as well as proceedings under the Rent Act. Further, if at this stage, the petition is held not maintainable, the landlord would suffer because, now after passage of 10 years, the proceedings under the Rent Act only are maintainable.

In the proceedings under Order 9 Rule 13 CPC, the Court is required to examine as to whether the petitioner has fulfilled the requirements of Order 9 Rule 13 CPC, which require the party to satisfy the Court that either the summons were not duly served or that he was prevented by any sufficient cause from appearing when the suit was taken up for hearing. It is apparent that the petitioner has failed to make out the aforesaid ground. Therefore, the Courts have correctly ignored this aspect.

Hence, there is no scope for interference. Accordingly, the revision petition is dismissed.

Now let us examine the petition for initiation of proceedings for having committed contempt of the court. The order passed on 17.06.2020 is alleged to have been violated by the revision petitioner-tenant, which reads as under:-

“Notice in the application for 22.07.2020, the date already fixed in the main case.

Mr. Vikas Kuthiala, counsel for the non-applicant-petitioner accepts notice and waives service.

Reply, if any, be filed on or before the next date of

hearing with an advance copy to counsel for the applicant.

Learned counsel for the non-applicant-petitioner states that pending rent for the months of April, May and June, 2020 shall be paid to the applicant before the next date of hearing positively. ”

It is apparent that during the hearing of a miscellaneous application, learned counsel for the tenant had stated that the rent for the months of April, May and June, 2020, shall be paid. Even if, ultimately, it is found that the petitioner has violated the interim order, at the most, this can be a ground for vacating the interim order.

In any case, now the revision petition filed by the petitioner is being dismissed. In view thereof, this Court does not find it appropriate to proceed with this contempt petition. Hence, this petition is also ordered to be dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the aforesaid order.

24.11.2020

Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**