

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CM-5380-CII of 2021 in/and
CR No.7805 of 2019
Date of Decision:30.07.2021

Harish Dabas

.....Petitioner

Versus

Amit Gupta

..... Respondent

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Satish Dabas, Advocate
for the applicant-petitioner.

Mr. Karan Gupta, Advocate
for the non-applicant-respondent.

LISA GILL, J(Oral).

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

CM-5380-CII of 2021.

Prayer in this application is for preponement of hearing of this revision petition which is listed for 23.09.2021.

Mr. Karan Gupta, Advocate, appears on behalf of the non-applicant-respondent and does not raise any objection to preponement of date of hearing of the revision petition.

In view of the reasons mentioned in the application as well as stand taken by learned counsel for non-applicant-respondent, hearing of CR No. 7805 of 2019 is preponed from 23.09.2021 for today itself.

Application is accordingly disposed of.

CR No. 7805 of 2019.

Petitioner has filed this revision petition challenging order dated 18.09.2019, passed by the learned Civil Judge (Jr. Division), Gurugram,

dismissing the petitioner's application for recalling order dated 28.09.2018 and further prayer for setting aside order dated 29.10.2018, whereby the petitioner's defence, who is arrayed as a respondent before the learned Rent Controller, has been struck off as written statement was not filed.

It is submitted that the landlord, arrayed as respondent in the present revision petition, filed an ejectment petition under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973, against the present petitioner. Petitioner appeared before the learned Rent Controller, Gurugram on 28.05.2018 and the matter was adjourned for 10.07.2018. Due to personal difficulty of the petitioner's counsel, matter was adjourned for filing of written statement on 23.08.2018. As the learned Rent Controller was on casual leave on 23.08.2018, matter was taken up on 21.08.2018 and adjourned to 28.09.2018. Written statement, it is stated was drafted and ready to be filed on 23.08.2018 itself. He refers to copy of the said written statement along with affidavit of the petitioner, which is attached with this petition as Annexure P-4. However, arguing counsel, who represented the petitioner could not reach the Court of learned Rent Controller on 28.09.2018, as he got stuck at District Courts at Nuh. His associate/ counsel was asked to seek an adjournment for one day. Request was turned down and defence of the petitioner was struck off vide order dated 28.09.2018.

Learned counsel for the petitioner submits that the petitioner immediately filed an application on the next day itself i.e 29.08.2018, for recalling of order striking of petitioner's defence along with copy of the written statement, though the written statement was not accepted.

Learned Rent Controller, Gurugram, vide impugned order dated 18.09.2019, dismissed the petitioner's application while observing that no ground for review of the order was made out and that sufficient effective

opportunities had been afforded.

It is submitted that great manifest injustice shall be caused to petitioner, in case, orders dated 18.09.2018 and 28.09.2018 are not set aside and the petitioner is not permitted to file his written statement. Delay of 30 days in filing of the written statement was not due to any shortcoming, fault or negligence on the part of the petitioner. Therefore, he should not be made to suffer for the same. Application for recalling was moved immediately, without delay. Evidence of the respondent-landlord, it is submitted has not yet been led. It is submitted that the respondent-landlord can be duly compensated. The petitioner, it is stated undertakes to file the written statement on 3.08.2021, i.e the date fixed in the matter before the learned Rent Controller, if so permitted. It is thus prayed that the present revision petition be allowed.

Learned counsel for the respondent does not dispute the factual position insofar as averments regarding listing of the matter is concerned. It is thus prayed that the present revision petition be dismissed.

I have heard learned counsel for the parties and have gone through the file with their assistance.

Factual position regarding listing of the matter and the various dates on which it was adjourned, is a matter of record. Zimni orders have been attached with this petition. It is further not denied by learned counsel for the respondent that written statement was sought to be filed by the petitioner along with his application for recalling of order dated 28.09.2018, though the same was not accepted and is not on the file. Doubtlessly, period of 90 days has been provided as per provisions of the CPC. However, it has been held by the Hon'ble Supreme Court in **Kailash Vs. Nanhku and others, (2005) 4 SCC480** that Court has the power and jurisdiction to accept

written statement beyond the period of 90 days in appropriate cases.

In the present case, it is a matter of record that the petition when listed for 23.08.2018 was adjourned on 21.08.2018 for 28.09.2018 as the presiding officer was availing casual leave. Written statement was clearly ready on the said date. Landlord has yet to lead evidence. It cannot be denied that the petitioner shall suffer irreparable loss and manifest injustice, in case, he is not permitted to file written statement and his defence is struck off.

In my considered opinion, written statement of the petitioner should be taken on record and an opportunity to defend the matter provided to him. Accordingly, orders dated 18.09.2018 and 28.09.2018, passed by the learned Rent Controller, Gurugram, are set aside and it is directed that in case written statement, is submitted by the petitioner on 03.08.2021, i.e., the date on which the matter is stated to be listed before the learned Rent Controller, Gurugram, same be taken on record by the learned Rent Controller, subject to the petitioner depositing cost of Rs.35,000/- to be paid to the respondent-landlord. No further opportunity shall be afforded to the petitioner. Needless to say, respondent-landlord shall be at liberty to file his replication and the learned Rent Controller, shall proceed with the trial from that stage.

Petition is disposed of accordingly.

30.07.2021
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.