

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

104

CR-7576-2014(O&M)
Date of Order: 27.05.2022

Vijay Kumar

..Petitioner

Versus

Raksha Devi

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Bahadur Singh, Advocate and
Ms. Rajni, Advocate, for the petitioner.

Mr. Ashok Gupta, Advocate and
Mr. Eklavya Gupta, Advocate
for the respondent.

ANIL KSHETARPAL, J(Oral)

While assailing the correctness of the concurrent orders passed by the Rent Controller as well as the Appellate authority, the tenant has filed the present revision petition.

The landlady claims that she bonafidely needs the premises for the settlement her two sons namely Ashok Kumar and Rajesh Kumar, therefore, she filed a petition under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973.

The tenant contested the petition on the ground that she has already filed two previous petitions, therefore, this petition is barred by the doctrine of res judicata. Both the authorities, after examining the facts, have come to a conclusion that the doctrine of res judicata is not applicable in the facts of this case.

The learned counsel representing the petitioner contends that though the first petition was with respect to the bonafide necessity of Krishan Kumar and Rampal (two sons of the landlady) but the second

petition was with respect to the bonafide necessity of Rajesh. He submits that after filing the second petition, the same was withdrawn without getting permission to file fresh one with better particulars. While relying upon a Division Bench judgment in *Mehtab Singh, Advocate vs. Shri Tilak Raj Arora and another, 1988 (1) R.C.R.(Rent) 159*, the learned counsel representing the petitioner contends that no one can be vexed twice over the same cause of action.

Per contra, the learned counsel representing the respondent has submitted that this petition was filed during the pendency of the second petition. While withdrawing the previous petition, the counsel representing the respondent specifically stated that the second petition suffers from technical defaults, therefore, he has already filed a fresh petition after removing the aforesaid technical defaults and he is reserving the right to maintain the second petition. He contends that the rent petition is not barred.

Keeping in view the aforesaid facts, the only issue which requires adjudication is as to whether the present petition is barred on the basis of principles of res judicata or not? The second petition was filed on 06.05.2005. On 13.03.2009, the learned counsel representing the landlady stated that he does not wish to continue with the present petition as it suffers from the technical defaults and he has already filed a fresh petition after removing the said defects. Consequently, while reserving the right to maintain the second petition, he withdrew the petition.

On the aforesaid statement, the court passed the following order:-

“Present: Sh. B.S. Garg, Advocate, for the petitioner.

Sh. J.K.Puri, Advocate, for respondent.

In view of his statement of the Ld. Counsel for the petitioner, present petition is hereby dismissed as withdrawn. File be consigned to the record room after due compliance.

*Announced
13.03.2009*

*Sd/-
(Devinder Singh)
Rent Controller,
Ambala.”*

It is evident that the order passed on 13.03.2009 was passed in the presence of the learned counsel representing the tenants (petitioner herein). He never objected to the withdrawal of the petition. It is also evident that the second petition was permitted to be withdrawn in view of the statement made by the counsel representing the landlady. Hence, the argument of the learned counsel that no permission has been granted is not correct. Once the court has permitted the landlady to withdraw the petition in view of the statement of her counsel, the permission is inherent in the same.

It is also not in dispute that the rent petition was filed before 13.03.2009.

Keeping in view the aforesaid facts, the judgment relied upon by learned counsel representing the petitioner is not applicable.

Consequently, finding no merit, the revision petition is dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

May 27, 2022

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**(ANIL KSHETARPAL)
JUDGE**

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