

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(103)

CR No.1208 of 2022(O&M)
Date of Decision : 27.03.2023

Ram Niwas Through LRs

...Petitioners

Versus

Bhupinder Kumar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rajesh Sood, Advocate for the petitioners.

Harsimran Singh Sethi J. (Oral)

CM No.3875-CII of 2022

The present application has been filed for impleading the legal heirs of Late Ram Niwas, petitioner.

Keeping in view the averments made in the application, which are duly supported by an affidavit, the same is allowed. The legal heirs of Late Ram Niwas, petitioner, details of whom have been given in para 3 of the application, are brought on record with all just exceptions.

CM No.3876-CII of 2022

Application is allowed as prayed for.

CR No.1208 of 2022

The present Civil Revision petition has been filed challenging the order dated 15.01.2020 by which, the application filed for condonation

of delay so as to decide the application under Order 9 Rule 13 CPC for setting aside the exparte order dated 19.09.2012 as well as the exparte judgment and decree dated 13.01.2014, has been dismissed.

In the present case, the petitioners, who were the owners of booth No.4, Sector 15, Chandigarh filed an ejectment petition against the respondent-tenant, which petition was allowed in his favour by the judgment and decree dated 21.08.2003. The appeal filed by the tenant i.e. respondent herein against the judgment dated 21.08.2003 was dismissed on 11.02.2006 and even the revision petition against the said order was dismissed by this Court on 23.04.2007. The proceedings became final after the SLP filed by the respondent-tenant was also dismissed by Hon'ble Supreme Court of India on 03.08.2007. Keeping in view the judgment and decree of the trial Court, the possession of the booth in question was taken by the petitioners from the respondent on 01.10.2007.

As after taking over the possession of the booth, the premises was not occupied by the petitioners as envisaged under the East Punjab Urban Rent Restriction Act, 1949, the respondent-tenant filed the suit under Section 13(4) of the East Punjab Urban Rent Restriction Act, 1949 for the restoration of possession of the premises in question.

Notice was issued and the petitioners appeared in the said suit.

It has come on record that during the pendency of the said suit filed by the respondent for restoration of the possession, the premises in question was sold by the petitioners in the year 2012. Thereafter, the petitioners did not appear to contest the suit filed by the respondent-tenant and vide order dated 19.09.2012, the petitioners were proceeded ex-parte in the said suit.

Keeping in view the said ex-parte order, ultimately the Rent Controller passed the judgment on 13.01.2014 directing that the possession of the premises in question be restored back to the respondent-tenant.

After the judgment and decree dated 13.01.2014 was sought to be executed by the respondent-tenant, after a period of seven years from being proceeded ex-parte and five years after the ex-parte judgment and decree, the application was filed by the petitioner under Order 9 Rule 13 CPC for setting aside the exparte order dated 19.09.2012 as well as ex parte judgment and decree dated 13.01.2014 along with said suit. The application for condonation of delay of 1624 days was also filed. The said application seeking condonation of delay has been dismissed by the Courts below by the impugned order dated 15.01.2020, which order is under challenge.

Before deciding the claim of the petitioners as raised in the present revision petition, it may be noticed that order rejecting the application seeking condonation of delay was dismissed in January, 2020 whereas the present petition has been filed on 18.02.2022 i.e. after a period of more than two years of the rejection of even the said application, which actually shows the conduct as to how diligent the petitioners are in pursuing the remedy especially when their application seeking condonation of delay was rejected in January, 2020 so as to challenge the said order after a period of two years. It may be noticed here that the trial Court in the impugned order dated 15.01.2020 has given reasons for not accepting the prayer of condonation of delay of 1624 days in filing the application under Order 9 Rule 13 CPC. The trial Court has mentioned that on 19.09.2012, counsel for the petitioners pleaded no instructions. The said

statement was made as the premises in question had already been sold by the petitioners. Thereafter, the petitioner, who claim before this Court that they were diligently pursuing the remedy before the trial Court in pursuance of the suit filed by the respondent-tenant, which statement cannot be accepted for the reason that nothing has been placed on record to show that the petitioners checked the status of the suit with their counsel for a period of five years before filing the application.

Though the allegations are being made that the petitioners were misled by the counsel to mean that the suit was dismissed, the said contention cannot be accepted for two reasons. i.e. nothing has been brought on record to show that any action has been taken by the petitioners against the counsel for the alleged false information and further, once the petitioners themselves had filed the eviction petition, which was contested by them and ultimately knows as to what is the procedure adopted for the trial, it cannot be said that at the time when the prosecution evidence is going on, the suit can be dismissed.

Further, as per the settled principles of law, delay has to be explained to show that the same is caused for the reasons, which are beyond the control of the applicant. Hon'ble Supreme Court in Civil Appeal No.2474-2475 of 2012 titled as **Office of the Chief Post Master General and others Vs. Living Media India Ltd. and another**, decided on 24.02.2012 held that as the rights got crystallized, the application seeking condonation of delay can only be allowed in exceptional circumstances where the delay has been explained beyond doubt.

In the present case, not only the rights has been crystallized in favour of the respondent-tenant but even the delay has not been explained

in the manner required. Not only there is delay in filing the application under Order 9 Rule 13 CPC but even after the said application was dismissed in January, 2020, the present petition has also been filed after a delay of more than two years.

Keeping in view the above, the present revision petition is hereby dismissed.

March 27, 2023

jt

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No