

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-1845-2017

DATE OF ORDER: 11.01.2023

Sagar Mehra

.....Petitioner

Vs.

Krishan Lal @ Kishan Lal and another

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: Mr. C.S. Pasricha, Advocate for the petitioner.
Mr. V.K. Sandhir, Advocate for respondent No.1.

Nidhi Gupta, J.

Prayer in present Revision Petition is for setting aside order dated 08.11.2016 Annexure P1 passed by learned Rent Controller, Amritsar vide which application filed by the petitioner-tenant under order 9 Rule 9 CPC for restoration of the application filed by the petitioner under Order 9 Rule 13 CPC for setting aside ex-parte ejectment order in Rent Petition titled as "Krishan Lal Vs. Deepak Mehra and another" has been dismissed.

Brief facts of the case are that the respondent No.1/landlord herein had filed rent petition dated 28.04.2001 seeking ejectment of the petitioner and respondent No.2 from the premises in question. The petitioner was duly served in the said Rent Petition and even

munadi was conducted. However, as the petitioner chose not to appear in the said matter, vide order dated 22.01.2002 the petitioner was proceeded against ex-parte. Thereafter, ejectment order was passed on 20.03.2003. Thereafter, execution petition was filed by the respondents in which the petitioner appeared and filed objections, and simultaneously on 30.5.2003, filed application under Order 9 Rule 13 for setting aside ex parte order. However, application under Order 9 Rule 13 CPC was dismissed in default on 04.03.2005 whereas the execution was adjourned to 14.03.2005. It is the petitioner's case that the Order 9 Rule 13 application of the petitioner was dismissed in default due to mistake in noting down the date by counsel for the petitioner. Thereafter, warrants of possession were executed on 29.03.2005. On 2.4.2005, the petitioner filed an application under Order 9 Rule 9 CPC for restoration of Order 9 Rule 13 proceedings. It is against the dismissal of this application for restoration vide impugned order dated 8.11.2016 that the present Revision Petition has been filed.

It is vehemently submitted by learned counsel for the petitioner that the petitioner had filed application for restoration under Order 9 Rule 9 within stipulated period of 30 days on 02.04.2005 itself and the petitioner cannot be made to suffer on account of the mistake of his counsel. It is further submitted that the bona fide of the petitioner/tenant is made out from the fact that in the proceedings under Order 9 Rule 13, he had tendered total arrears of rent to the tune of Rs.39,000/- on 12.08.2004 which was even accepted by the respondent/landlord albeit under protest. Learned counsel further submits that though issues were framed in 2006 and

the petitioner closed his evidence in 2006 itself, however, thereafter, the matter was deliberately delayed by the respondent till 2016. Learned counsel repeatedly submits to emphasise that in this revision petition he is not arguing on the merits of the matter; but has only sought restoration of the matter and disposal of his application under Order 9 Rule 9 CPC. It is submitted that the respondent took ten years to complete the evidence of RWs and that his application under Order 9 Rule 13 CPC may or may not be allowed by the learned Court below however, the application for recalling impugned order dated 08.11.2016 ought to be allowed as the same was passed on account of mistake in noting down the date by counsel for the petitioner before the learned Rent Controller, and not on account of any mistake on part of the petitioner. In support, learned counsel for the petitioner refers to **Civil Appeal No.1415 of 1981 titled as "Rafiz and another Vs. Munshilal and another"**; **Civil Appeals No.1027---1028 with 1029-1030 of 1992 and CA Nos.8465-8466 of 2022 titled as S. Amarjit Singh Kalra (dead) by LRs and others Vs. Smt. Pramod Gupta (dead) by LRs and others WITH Smt. Ram Piari (dead) by LRs and others Vs. Smt. Pramod Gupta (dead) by LRs and others & Sahib Singh Rathi and others Vs. Smt. Gulab Sundri Bapna (dead) by LRs and others; FAO No.113 of 1974 titled as "Avtar Singh Minor etc. Vs. Bhajan Singh etc."**; **CR No.7765 of 2013 titled as "Varun Goyal Vs. Gurdarshan Singh Mann and others; CR No.2049 of 2010 titled as "Pritam Singh Vs. Financial Commissioner (Revenue & Rehabilitation), Punjab and others and CR No.1381 of 2013 titled as "Dilbag**

Singh and others Vs. Punjab Singh” to submit that interest of the innocent party should not suffer for misdemeanor or inaction of his counsel.

In response, learned counsel for the respondent No. 1-landlord submits that following issues were framed in the matter:-

1. Whether there are sufficient grounds to restore the application under order 9 rule 13 CPC? OPA

2. Whether the present application is not maintainable? OPR

3. Relief.

Ld. Counsel then refers to the findings of the Id. Trial Court:-

“10. Onus to prove this issue has been upon the tenants/applicants. To prove their contentions, respondents/applicants have examined PW-1 Mr.Kuldip Bawa, Advocate, who in his examination-in-chief has supported the case of Tenants/applicants. However, statement made by him in his cross-examination has been quite material. Mr. Kuldip Bawa, Advocate has stated that he was engaged in the Execution application as well as application under Order 9 Rule 13 of Civil Procedure Code. He has also stated in his cross-examination that he has brought his diary and there is an entry of 27.3.2004 with respect to case titled as Kishan Lal Vs Deepak Kumar, which was adjourned to 24.4.2004 and case was again adjourned to 24.7.2004 then to 12.8.2004, 28.8.2004, 17.9.2004, 6.11.2004 and 4.3.2005. He has also stated that he has brought diary for the year 2005 and case was again adjourned from 4.3.2005 to 2.5.2005 again said that he cannot tell the next date of the case from 4.3.2005 because there is not entry in his diary. However, he voluntarily stated that case was adjourned to 4.3.2005 and 2.5.2005. He has also stated that said date was noted on brief.

11. Thus, on the one hand, it has been the case of the applicant that case was adjourned from 4.3.2005 to 2.5.2005 and advocate of the applicant has duly admitted this fact in his cross examination that no date was noted after 4.3.2005. If actually the case was noted to have been adjourned from 4.3.2005 to 2.5.2005 then there must have entry in the diary maintained by the concerned Advocate. Even, AW2 Sagar in his cross-examination has stated that he does not know about Court procedure but they were told by the Advocate that rent has to be deposited. He also

deposed that his father used to maintain diary regarding the court appearance. However, he has not brought that diary in the Court. Thus, from the evidence led on record by the applicant, it is quite clear that evidence on record is not in consonance with the pleadings. Even, admittedly possession has already been delivered to the respondent in the execution petition. As such, no ground is made out to restore the application and accordingly, this issue is decided against the tenants/applicants and in favour of the landlord/respondent."

Ld. Counsel for respondent No. 1-landlord submits that accordingly, in his cross-examination before the learned Court below, counsel for the petitioner had admitted that it is not noted down in his diary that the matter was adjourned from 04.03.2005 to 02.05.2005 however, the said date was noted on his brief.

I have heard Id. Counsel for the parties.

I find merit in the arguments advanced on behalf of the respondent/landlord. A perusal of the record of the case shows that the conduct of the petitioner all through the proceedings has been of utmost casualness in nature. It will be useful at this juncture to briefly peruse the sequence of events to bear this out:

28.4.2001 - Ejectment application filed by landlord, on grounds of non-payment of rent w.e.f 1.5.1998. Service refused by the petitioner/tenants. Service effected by *munadi* and fixation after refusal of summons.

22.1.2002 – As the petitioner/tenants refused to appear in the matter, they were proceeded against ex-parte.

20.3.2003 – Ejectment order passed.

24/27.5.2003 – Execution filed by respondent No. 1/ landlord. The tenants were served in the execution.

30.5.2003/ 7.6.2003 –The petitioner/ tenants filed application under Order 9 Rule 13 CPC for setting aside ex parte.

12.8.2004 - The petitioner and respondent No. 2/tenants paid arrears of rent to the tune of Rs.39,000/–.

4.3.2005 - The petitioner's application under Order 9 Rule 13 CPC dismissed in default. However, presence of counsel for the petitioner is recorded in execution file before the Court on 4.3.2005.

29.3.2005 – Warrants of possession executed. Possession taken and the signature of the Judgement Debtor is there on the warrants of possession.

31.3.2005/2.4.2005 - Restoration application under Order 9 Rule 9 CPC filed for the restoration of application under Order 9 Rule 13 CPC dismissed in default on 4.3.2005, on the ground that counsel for the petitioner had noted the wrong date.

10.6.2005 - Issues framed by the Court on 10.6.2005. The AWs closed after cross-examination and further cross-examination on 1.9.2006.

10.10.2006 – Thereafter, the matter was adjourned for RWs, and for filing of documents. The respondent No. 1/landlord was proceeded against ex-parte in the application and moved an application dated 18.4.2014 for setting aside ex parte against the respondent/landlord in the said application.

8.11.2016 –Application under Order 9 Rule 9CPC for restoration of Order 9 Rule 13 proceedings, dismissed vide impugned order by holding that ground has been taken that the next date is 2.5.2005 but the same did not figure in the diary of the counsel for the Petitioner. In fact counsel during the cross-examination had categorically stated that the case was adjourned on 4.3.2005 for 2.5.2005, which date had been noted by him as 2.5.2005 on his brief. However, brief was not produced before the Id. Court below.

In my considered view, a perusal of the above facts/sequence of events shows that the petitioner and respondent No. 2/ tenants have intentionally absented themselves from the proceedings time and again in a deliberate attempt to prolong the proceedings.

Even otherwise, before the Id. Court below, counsel for the petitioner has stated in his cross-examination that though the next date of hearing of the Order 9 Rule 13 application was for 02.05.2005 but the same was not noted down in his diary. It was however, stated that the matter had been adjourned for said date of 2.5.2005 was noted on the counsel's brief - but admittedly the said brief was not produced in the Court. Accordingly, there is nothing to substantiate the petitioner's arguments/averments that the counsel for the petitioner was under a mistaken apprehension that the matter had been adjourned for 02.05.2005 in view of the fact that the brief was not produced by him before the Court below. Moreover, admittedly, presence of counsel for the petitioner is marked on order dated 4.3.2005, which only supports the finding of the learned Court below that the evidence on record is not in consonance with

the pleadings. Thus, the star argument on behalf of the petitioner also does not hold water, and deserves to be rejected.

Further, admittedly, possession in the present case has been delivered to the respondents as far back as 29.03.2005 in the presence of the petitioner and the warrants of possession bears the signatures of the petitioner. Admittedly, the respondents have been in possession of the premises in question since 2005 i.e. for a period of over 17 years, and have in fact, let out the premises to other tenant. Therefore, much water has flown under the bridge in the interregnum.

Accordingly, in view of the facts and circumstances as noted above, I find that no ground is made out to interfere in the impugned order. The present Civil Revision therefore, stands dismissed.

11.01.2023
Sunena

(Nidhi Gupta)
Judge

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