

105 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-2244-2017(O&M)

Date of Decision :27.03.2023

Bhajan Singh ...Petitioner

versus

Baldev SinghRespondent

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Ms. Shivya Sehgal, Advocate for the petitioner.

B.S. Walia, J. (Oral)

1. Challenge in the instant petition filed by the petitioner-tenant is to judgment dated 15.01.2014, passed by the learned Rent Controller, Ludhiana, in Rent Application No.07 dated 18.07.2006, allowing the eviction petition filed by the respondent-landlord as also the judgment dated 18.01.2017, passed by the learned Appellate Authority, Ludhiana, in Rent Appeal No.2 dated 12.02.2014, dismissing the appeal filed by the petitioner-tenant.

2. Sole argument of learned counsel for the petitioner-tenant is that Rent Application No.287 dated 14.03.1997, was filed by the respondent-landlord but after commencement of proceedings, he stopped participating in the proceedings, as a result of which, the same was dismissed for non-prosecution vide order Annexure P/2 dated 25.02.2004, by passing the following order:-

Present: None for the petitioner.

Shri N.C. Sehgal, Advocate for respondent.

Case called again several times but none appeared for and on behalf of the petitioner. It is already 4:00 p.m. As such,

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present petition is dismissed in default. File be consigned to record room, Ludhiana.

*Pronounced in open Court.
25.02.2004*

*Jasbir Singh,
Rent Controller, Ludhiana.*

3. Learned Counsel contends that after the dismissal of Rent Application No.287 dated 14.03.1997 for non-prosecution vide order Annexure P/2 dated 25.02.2004, the respondent-landlord filed a fresh eviction petition No.07 dated 18.07.2006, on the same grounds as taken in Rent Application No. 287 dated 14.03.1997 and the same was allowed by the learned Rent Controller, Ludhiana and appeal against the same dismissed by the learned Appellate Authority, Ludhiana, despite a specific plea having been raised by the petitioner tenant before both the Courts of non-maintainability of the subsequent petition on the same cause of action in view of the bar contained under Order 9 Rule 9 CPC as well as the decisions of this Court in Mehtab Singh, Advocate vs. Shri Tilak Raj Arora and another 1988 (1) RCR (Rent) 159, Bhagwan Dass (died) through L.Rs. vs. Ramesh Kumar 1999 (2) RCR (Rent) 586, Smt. Biran vs. Gurmukh Singh 1991 (1) RCR (Rent) 95 and Sardari Lal Jain vs. Smt. Dhanwanti Devi 2002 (2) RCR (Rent) 296. Relevant extracts of the aforementioned decisions are reproduced as under:-

Mehtab Singh Advocate's case (supra)

“6. If the various provisions noticed above are held to be not applicable to the proceedings before the Rent Controller, it would necessarily result in the violation of the maxim that no man should be vexed twice over the same cause of action and the landlord or the tenant as the case may be, would be able to harass time and again on the same cause of action and for the

same relief. For example, a landlord after the full trial of his petition for ejectment at the stage of arguments feeling that the petition is likely to fail, would get it dismissed as withdrawn and institute a fresh one again on the same cause of action. He would be able to repeat the same process time and again if the principles underlying the provisions of Order 23, Rule 1(4) are held to be not applicable to the proceedings before the Rent Controller.

Similarly if the provisions of Order 2, Rule 2 of the C.P.C. are held to be not applicable, a landlord would be able to file ejectment application on one ground although many other grounds may be available for the same relief at a given time. After having failed on that ground till the highest Court, he would be able to institute another petition on the second ground and thus go on fighting litigation and harassing the opposite party. Same would be the situation with regard to the provisions of Order 9, Rule 9 of the C.P.C. and the landlord would be able to get his petition dismissed in default at any stage of the proceedings and file a fresh one on the same cause of action resulting in the abuse of the process of the Court and harassment of the opposite party. All these principles as held in Lal Chand's case (AIR 1977 SC 789) (supra), are conceived in the larger public interest and founded on equity, justice and good conscience, which require that no man should be vexed twice on the same cause of action. We are, therefore, of the considered view that even though the Code of Civil Procedure is not applicable as such to the proceedings before the Rent Controller; but the general principles contained in the Code, including the one noticed above which are based on justice, equity and good conscience would govern those proceedings and the two decisions relied upon by the learned counsel for the respondents in Ram Parkash v. Nathu Ram, 1984 Cur LJ (Civ & Cri) 96 and Raghubir Kaur v. Gurmej Singh, (1985) 87 Pun LR 266 are, accordingly overruled.

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BhagwanDass's case (supra)

13. In fact, it is true that the provisions of Code of Civil Procedure strictly are not applicable to the proceedings before the learned Rent Controller. But even if the strict provisions of Code are not applicable, still the rule of the game has necessarily to be observed. If earlier a petition had been filed and dismissed, indeed, the landlord cannot harass the tenant more often than once for the same cause. It was held that the property has not been sublet. The finding became final. Unless there is any fresh act of subletting-the property, a second petition would not be maintainable. To that extent, the finding of the learned Appellate Authority must be set aside restoring that of the learned Rent Controller.”

Smt. Biran's case (supra)

“A reference to the record shows that earlier on September 18, 1934. the landlord had filed a petition for ejectment against the present petitioner on the same ground, namely, personal necessity This petition was dismissed in default on June, 4, 1985. It was thereafter that he filed the present petition for ejectment on March 4, 195-6. Admittedly, the cause of action of this second application is tie same as in the earlier application and further the learned counsel for the respondent landlord was constrained to accept the fact that no charge in circumstances has been pleaded in the present application from that in the earlier one. This being so, the present application is clearly barred under the principles laid down in Order 9 Rule 9 of the Code of Civil Procedure. Reference in this behalf may be made to the judgment of the division Bench of oar Court in Mehtab Singh v. Tilak Raj Arora, A.I.R. 1989 Punj. 12, (1988-1) 93 P. L. R. 269, where it was held that the principle that no man can be vexed twice on the same cause of action, is applicable even in proceedings under the Rent Restriction Act, it being founded upon equity, justice and good conscience. There can thus be no

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escape from the conclusion that the present it petition for ejectment of the tenant on the ground of personal necessary stands barred by dismissal of the earlier one

3. The impugned order of the Appellate Authority cannot therefore, be sustained and is accordingly hereby set aside. This revision petition is thus accepted with costs. Counsel's fee Rs. 300/-."

Sardarilal Jain's case (supra)

"12. In view of the law laid down by the Division Bench of this Court, in my opinion, it could not be said that the present petition filed by the landlady for the ejectment of the tenant on the same ground that he had ceased to occupy the premises continuously for a period of four months prior to the filing of the petition without sufficient cause, would be maintainable. However, the position would be different if the period of four months referred in the earlier petition was different from the period referred to in the present petition. However, as referred to above, the earlier petition which was filed on 22. 1.1985 also contained a period which was common with the period referred to in the present petition and as such the present petition on the same cause of action would be barred under Order 23 Rule 1 CPC.

13. As referred to above, in 1977 Rent Law Reporter 417 (supra), the Hon'ble Full Bench of this Court had held that even though all the provisions of the Code of Civil Procedure were not applicable to the proceedings in applications for eviction under the Act, but the principles which are the basis and foundation for the administration of justice would undoubtedly be applicable to these proceedings also."

4. In the instant case, the earlier eviction petition was filed on the ground of personal necessity as well as arrears of rent w.e.f.

01.05.1992, whereas the subsequent petition was also filed on the same

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ground of personal necessity and arrears of rent w.e.f. 01.05.1992.

5. In view of the position noted above as well as the decision of this Court in Mehtab Singh Advocate’s case (supra), BhagwanDass’s case (supra), Smt. Biran’s case (supra) and Sardari Lal Jain’s case (supra) as also the provisions of Order 9 Rule 9 CPC,another petition on the same cause of action after dismissal of the earlier petition on account of non-prosecutionis not maintainable for although the provisions of the Code of Civil Procedure are not directly applicable to the proceedings in applications for eviction under the Act, yet the principles underlying therein being the basis and foundation for the administration of justice, are undoubtedly applicable to the proceedings before the learned Rent Controller.

6. In view of the admitted position as noted above, the subsequent petition filed by the respondent-landlord is held to be not maintainable, therefore, the revision petition is allowed, impugned orderdated 18.01.2017 passedby the learned Appellate Authority, Ludhiana, dismissing the appeal against the order of ejectment passed by the learned Rent Controller, Ludhiana dated 15.01.2014 as also order dated 15.01.2014, passed by the learned Rent Controller, Ludhiana, allowing the ejectment petition, are set aside and the rent petition dismissed.

(B.S. Walia)
Judge

27.03.2023
rajesh

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