

245 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-7469-2018 (O & M)
Date of decision: 26.07.2023

BIBI SATNAM KAUR MEMORIAL TRUST

...Petitioner

V/S

JANAK RANI AND ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Munish Gupta, Advocate
for the petitioner.

Mr. Anil Kumar Spehia, Advocate
for respondents No.1 to 4 and 6.

None for respondent No.5.

HARKESH MANUJA J. (ORAL)

1. By way of present revision petition, challenge has been made to the judgments dated 06.10.2017 and 14.09.2018 passed by the learned Rent Controller as well as the Appellate Authority at Jalandhar dismissing the ejectment petition filed on behalf of the petitioner/landlord on account of the fact that no evidence at all was led at its instance.

2. In the present case, an ejectment petition was filed on behalf of the petitioner/trust against respondents/tenants on the grounds of payment arrears of rent; the building having become unfit and unsafe for human habitation, as well as for bona fide requirement so as to set up a charitable hospital by demolishing the tenanted premises and including the same in the remaining portion.

3. In response thereto, respondents appeared and filed their written statement, opposing the prayer made in the ejectment petition. Issues were framed by the learned Rent Controller and thereafter, the matter was adjourned for recording of the evidence of the petitioner/trust. Despite having availed 06 effective opportunities, the petitioner/trust failed to adduce any evidence. Similarly, even no evidence was led from the side of respondents/tenants.

4. The learned Rent Controller vide its order dated 06.10.2017 dismissed the ejectment petition filed at the instance of the petitioner/trust while holding that in the absence of any evidence, the petitioner/trust failed to prove the case set up by it in the ejectment petition.

5. Aggrieved thereof, the petitioner/trust filed appeal, however, the same was also dismissed by the Appellate Authority vide order dated 14.09.2018, recording similar reasons.

6. By way of present revision petition, the aforementioned two orders passed by the Courts below have been challenged before this Court.

7. Learned counsel for the petitioner/trust submits that though, the petitioner/trust did not pursue the ejectment petition despite due diligence, however, substantial rights were involved in the ejectment proceedings pertaining to the property in question as the petitioner/trust wanted to set up a charitable hospital. Learned counsel further submits that in case, two effective opportunities are afforded to the petitioner/trust, it would advance the cause of justice and the petitioner/trust would be able to prove the pleadings as set up in the petition and thus prays that the matter be remanded to the learned Rent Controller.

8. On the other hand, prayer made by the learned counsel for the petitioner/trust has been opposed at the instance of respondents while submitting that petitioner/trust was totally negligent in pursuing its ejectment petition and the remand of the matter at this stage would result into serious prejudice to the rights of the respondents/tenants.

9. I have heard learned counsel for the parties. I find substance in the submissions made on behalf of the petitioner/trust. Although, it appears that the petitioner/trust did not pursue the ejectment petition with due diligence, however, considering the fact that the substantial rights of the parties are involved in the ejectment petition which need to be adjudicated upon by affording them opportunity to bring on record the evidence in support of their pleadings and thus, the passing of the orders dated 06.10.2017 & 14.09.2018 by the Courts below in the absence of any evidence on record to support the pleadings has caused serious prejudice to the rights of the petitioner/trust. Moreover on 01.11.2018, this Court passed the following order:

“This revision has been filed against the concurrent judgments of the Courts below dismissing an eviction petition filed by the petitioner. The grounds taken inter-alia were of personal necessity and the building having being rendered unfit for human habitation. However, none appeared to lead any evidence on behalf of the petitioner-trust and consequently, the eviction petition was dismissed.

The limited argument made by the learned counsel for the petitioner is that this dismissal should not be taken to be under Order 17 Rule 3 CPC because that would preclude the petitioner-trust from filing a fresh petition on the grounds taken therein. His argument is that this is a clear case where the petition should have been dismissed for non-prosecution.

I put it to the learned counsel for the petitioner that even before considering this argument, I would have to compensate the respondents for having faced litigation in three Courts. Counsel for the petitioner has very fairly accepted this. In the circumstances, notice of motion is issued subject to payment of costs of Rs.50,000/-.

Learned counsel for the petitioner undertakes to serve the respondents by way of dasti process. May do so. Dasti only.

Adjourned to 10.12.2018.

The appellant is directed to hand-over a draft of Rs.50,000/- in the name of the respondent No.1 along with the summons.

To be shown in the urgent list.”

10. In pursuance thereof, the respondents have already accepted cost of Rs.50,000/-, thus they have apparently been compensated by the petitioner/trust for the litigation having been faced by them. In addition thereto, the petitioner/trust is further burdened with another cost of Rs.20,000/- to be paid by it to the respondents towards the unnecessary continuation of litigation against them.

11. In view of the discussion made hereinabove and solely in the interest of justice to afford an opportunity to the parties to lead their respective evidence in support of their pleadings, the orders dated 06.10.2017 & 14.09.2018 passed by the Courts below are hereby set aside and the matter is remanded to the learned Rent Controller to decide the matter after granting two effective opportunities to the petitioner/trust and four effective opportunities to the respondents to conclude their evidence.

12. Considering the fact that the ejectment proceedings were initiated in the year 2014, the learned Rent Controller is directed to conclude the proceedings within a period of one year from today and cost of

Rs.20,000/- imposed upon petitioner/trust shall be a condition precedent and the parties are directed to appear before the learned Rent Controller on 25.08.2023 positively.

13. Present petition stands disposed of.

26.07.2023
manisha

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No