

203 IN THE HIGH COURT OF PUNJAB AND HARYANA
 AT CHANDIGARH

CR-783-2017 (O & M)
Date of decision: 26.07.2023

SUKH RAM

...Petitioner

V/s

NARESH KUMAR

...Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Brijender Kaushik, Advocate
 for the petitioner.

 Mr. Raj Kumar Rana, Advocate
 for the respondent.

HARKESH MANUJA J. (ORAL)

By way of present revision petition challenge has been made to the orders dated 21.02.2013 and 11.01.2017 passed by the Rent Controller as well as the Appellate Authority, Ambala, whereby, an application for setting aside the exparte eviction proceedings against the petitioner-tenant has been declined.

2. Briefly stating, an eviction petition was filed on the grounds of arrears of rent on 16.03.2010 against petitioner-tenant from a small tenanted premises wherein written statement was filed on his behalf on 01.09.2010 and issues were framed by the Rent Controller on 25.11.2010.

3. In the said eviction petition, the petitioner-tenant was proceeded against exparte vide order dated 05.11.2012, followed by an ejectment order dated 21.02.2013 passed against him.

4. In September 2013, an application was filed on behalf of petitioner-tenant seeking setting aside of exparte proceedings as well as of the exparte eviction order dated 21.02.2013 *inter alia* on the ground that the petition was since transferred from one Court to the another, the petitioner-tenant could not appear before the transferree Court and even, his advocate did not inform him about the proceedings.

5. Upon notice, objections were filed to the said application at the instance of the respondent-landlord. Vide order dated 31.10.2015, learned Rent Controller, Ambala dismissed the application filed on behalf of the petitioner-tenant.

6. Aggrieved thereof, the petitioner-tenant filed first appeal which came to be dismissed by Appellate Authority, Ambala on 11.01.2017, thereby affirming the order of learned Rent Controller.

7. Impugning the aforesaid orders dated 31.10.2015 and 11.01.2017, learned counsel for the petitioner vehemently submits that with the passing of the exparte ejectment order dated 21.02.2013, the agreement of tenancy between the parties stood terminated, however, with the filing of fresh ejectment petition at the instance of respondent-landlord in the year 2016 seeking arrears of rent with effect from 01.03.2009 to 31.01.2010, a fresh contract of tenancy stood created in favour of the parties and thus, the respondent-landlord by his own act and conduct was estopped from seeking ejectment on the basis of order dated 21.02.2013. He further submits that non-appearance of the petitioner or his counsel on 05.11.2012 was an act of bona fide mistake which occurred because of transfer of matter from one Court to another and the application for setting aside of the exparte

proceedings as well as exparte ejectment the order dated 21.02.2013 was filed within 30 days of knowledge. Learned counsel also challenges the merits of the ejectment order while submitting that the respondent-landlord claimed arrears of rent at the rate of Rs.350/- per month, whereas, stand taken by the petitioner-tenant was that the rent was Rs.250/- per month and the document Ex.P2, which was placed on record by the respondent-landlord himself endorsed the stand of the petitioner-tenant qua the rate of rent to be Rs.250/- per month.

8. On the other hand, learned counsel representing respondent-landlord submits that non-appearance of the petitioner-tenant on 05.11.2012 was an intentional act, merely for the purpose of delaying the ejectment proceedings. He further submits that the application seeking setting aside of exparte ejectment order was filed after a period of almost 10 months of the exparte proceedings.

9. I have heard learned counsel for the parties and gone through the paper book, I am unable to find substance in the submissions made on behalf of the petitioner-tenant, who even appeared before the Rent Controller in pursuance to the notice issued in the ejectment petition and also filed his written statement. Later, on account of his non-appearance, he was proceeded against exparte on 05.11.2012 and the ejectment order was passed against him on 21.02.2013 by the Rent Controller. The application seeking setting aside of the exparte proceedings was filed by petitioner-tenant in September 2013 i.e. after a period of almost 10 months from the date of exparte proceedings. Thus, in the facts of the present case, the plea of application having been filed within 30 days from knowledge about the

exparte proceedings and the exparte eviction order had no relevance as the petitioner-tenant duly appeared before the Rent Controller and represented through lawyer, even having filed his written statement.

10. Moreover, the non-appearance of the petitioner-tenant, in the facts and circumstances of the case cannot be held as bona fide merely on the ground of transfer of the ejectment petition from one Court to another particularly, when the petitioner-tenant was being represented through an Advocate, yet, took almost 10 months just to verify about the status of the ejectment petition. Had the petitioner-tenant being vigilant of his rights, he would have immediately enquired about the pendency or outcome of ejectment petition filed and pending against him, particularly when he was already participating in the proceedings having filed his written statement.

11. Moreover, no merits can be found in the submissions made on behalf of the petitioner as regards the termination of tenancy with the exparte ejectment order and creation of fresh tenancy with the filing of subsequent ejectment petition at the hands of respondent-landlord. The filing of fresh ejectment petition in the year 2016 by the respondent-landlord, seeking arrears of rent with effect from 01.03.2009 to 31.01.2010 was under compelling circumstances when the petitioner-tenant was not paying the rent recoverable and thus, he cannot be given benefit of his own wrongs by putting the respondent-landlord to a disadvantageous position. Further, the previous ejectment proceedings were not final as the possession of tenanted premises has not been delivered to the respondent-landlord and the application for setting aside of the exparte ejectment order was subjudice before the Rent Controller, as such, the filing of fresh ejectment petition at

the hands of respondent-landlord could not be taken to be a creation of fresh tenancy in favour of the petitioner-tenant.

12. Equally important, the ejectment order dated 21.02.2013 was never challenged by the petitioner-tenant in an appeal before the Appellate Authority and thus, he cannot be permitted to question the merits of the same. Above all, at this stage, after the expiry of more than ten years of the exparte proceedings and the ejectment order, permitting the petitioner-tenant to contest the proceedings would cause serious prejudice to the rights of the respondent-landlord, in comparison to the rights of petitioner-tenant, who has been negligent throughout in pursuing his rights of defending himself, having filed the application for setting aside exparte proceedings and the ejectment order after more than one year of its passing.

12. In view of the discussion hereinabove, finding no merit in the present petition, the same is, thus dismissed.

26.07.2023
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(HARKESH MANUJA)
JUDGE

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