

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

(244)**CR-7917-2017****Date of Decision: 24.07.2023**

Krishan Kishore

.....Petitioner

Versus

Jaswant Singh (since deceased) through LRs.

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Anil Chawla, Advocate, for the petitioner.

HARKESH MANUJA, J.(ORAL)

1. By way of present revision petition, challenge has been made to an order dated 18.01.2017 passed by the learned Rent Controller, whereby, application for seeking restoration of the ejectment petition filed at the instance of petitioner/landlord has been dismissed.

2. In the present case, an eviction petition came to be filed at the instance of petitioner/landlord regarding tenanted premises comprising one shed bearing property No.1 situated in Radha Krishan Rice and General Mills, Chatiwind Gate, Tarn Taran Road, Amritsar. The eviction petition was filed on 19.07.1997 on the ground of arrears of rent. The same was ordered to be dismissed in default on 23.10.2000. An application for restoration of ejectment petition was filed on behalf of petitioner/landlord on 21.12.2000. The said application was also dismissed for non-prosecution on 28.07.2011, though finally allowed on 15.02.2012 by the Rent Controller by passing the following order:

“Krishan Kishore Vs. Jaswant Singh

Present: Sh. Vikram Puri, Adv., ld. Counsel for the applicant.

Heard on the application for restoration of the ejectment petition dismissed in default on 28.07.2011. Perusal of the original file shows that on 28.07.2011 the ejectment petition was dismissed in default at the initial stage when case was fixed for appearance of

the LRs of the respondent and present application was filed on 26.08.2011. Hence the present application is hereby allowed subject to payment of costs of Rs.1500/- to be deposited in free legal aid cell and ejectment petition is restored to its original number. Let LRs of the respondent be summoned for 10.03.2012. Dasti summons be also taken.

*(Pooja Andotra)
CJ/JD 15.02.2012.”*

3. In pursuance of the aforementioned order, the eviction petition was fixed for recording of the evidence of the petitioner/landlord followed by examination of four witnesses on his behalf, however, later, the Rent Controller vide order dated 18.01.2017 instead of deciding the eviction petition on merits dismissed the same by, declining its restoration.
4. Referring to the order dated 15.02.2012 passed by the Rent Controller, learned counsel for the petitioner submits that vide aforesaid order, the application for restoration of the restoration application was allowed and even the main ejectment petition was restored to its original number and thus, the impugned order passed by the Rent Controller on 18.01.2017 was wholly against record.
5. No one has chosen to appear on behalf of respondents, despite service.
6. I have heard learned counsel for the petitioner and have gone through the paper book
7. A perusal of record shows that vide order dated 15.02.2012, learned Rent Controller allowed the application for seeking restoration of the restoration application and even restored the ejectment petition to its original number and that is why the date in the eviction petition was fixed for recording of the evidence on behalf of petitioner/landlord followed by recording of evidence of 4 of his witness. Even, till July 2014, some of the heirs of deceased-tenant continued to appear before the learned Rent

Controller though they were proceeded ex-party thereafter and the evidence of the petitioner/landlord was recorded. In view of the fact that the main eviction petition already stood restored to its original number vide order dated 15.02.2012 there being a specific order passed in this regard, unless the same was set aside, it could not have been reconsidered by the Rent Controller at later stage having permitted the petitioner/landlord to get his entire evidence recorded and thus, learned Rent Controller was required to dispose of the eviction petition based on the evidence of the petitioner/landlord as was available on record unless there was any application for setting aside of the ex-parte proceedings moved at the instance of respondents.

8. In view of the discussions made hereinabove, present petition is allowed and the impugned order dated 18.01.2017 is hereby set aside with a direction to the Rent Controller to decide the eviction petition afresh on merits based on the evidence available on record.

(HARKESH MANUJA)
JUDGE

24.07.2023
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No