

THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

122

CR-5910-2023

Date of Decision: 31.10.2023

SATINDER PAL SINGH

....PETITIONER

VS

SEWA SINGH SANGHA

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Amit Dhawan, Advocate
for the petitioner.

GURBIR SINGH J. (ORAL)

Challenge in this revision petition under Article 227 of Constitution of India is for quashing of the impugned order dated 29.02.2020 (Annexure P-9) passed by learned Rent Authority, NRI Cases, Jalandhar, whereby the defence of the petitioner-tenant is struck off.

In brief, respondent-landlord filed a petition under Section 24 of the Punjab Rent Act, 1995 [for short 'the Act'], for ejectment of the petitioner-tenant from the demised premises on the ground of non payment of arrears of rent, the tenant has violated terms and conditions of the rent agreement as he has made addition and alteration in the premises without consent of the landlord and on the ground of personal necessity. The petitioner-tenant appeared in the said rent petition and moved an application seeking leave to defend and also raised objection that petition was not maintainable under Section 24(3) of the Act. The respondent-landlord made the statement and withdrew the petition with regard to the grounds of non payment of arrears of rent and making addition and alteration in the demised premises without consent of landlord.

On the same day, respondent-landlord filed another petition (Annexure P-4) under Section 20 of the Act for ejectment of the petitioner on the ground of non payment of arrears of rent and the tenant has made addition and alteration in the demised premises without consent of the landlord.

The petitioner-tenant appeared in the Court but could not file reply and vide order dated 10.12.2018 (Annexure P-5) the defence of the petitioner-tenant was struck off. An application (Annexure P-6) was moved for granting opportunity to file the written reply and vide order dated 24.01.2020 (Annexure P-7) the said application was allowed and it has also been mentioned in the order that reply to the main petition is taken on record.

Learned counsel for the petitioner has argued that by mistake instead of filing reply to the aforesaid petition, the petitioner inadvertently filed an application (Annexure P-8) seeking leave to defend and the same was taken on record but it was mentioned that reply to main petition was taken on record. Learned Rent Controller, after considering the fact that reply to the main petition was not filed, vide its order dated 29.02.2020 again struck off the defence of the petitioner. Thereafter, due to Covid-19 Pandemic, case was being adjourned to different dates. Counsel for the petitioner verified about the status of the application for leave to defend moved in the aforesaid petition and it came to his notice that inadvertently same was placed on record in the petition filed by the respondent under Section 24 of the Act. An application dated 05.8.2021 (Annexure P-10) was moved for issuance of directions to the concerned Ahlmad to place on record the application seeking leave to defend dated 29.07.2019 in the instant rent petition, however, the same was inadvertently placed on

other rent petition, but without considering the material aspects of the case, said application was dismissed on 11.11.2021 (Annexure P-11).

It is further argued that counsel for the petitioner did not inform him. Thereafter, the petitioner sought advice of other counsel and came to know that defence of the petitioner was struck off. The reply of the petition could not be filed due to bona fide mistake on the part of the counsel for the petitioner. It is further submitted that only one opportunity be given to the petitioner to file the reply otherwise petitioner-tenant would not be non judged without his defence.

I have heard submissions made by learned counsel for the petitioner and have gone through the paper book.

In the order dated 24.01.2020 (Annexure P-7), it is mentioned that reply to the main petition is taken on record. Extract of order is as under:

“Perusal of the file shows that on 07.12.2018, this Court was on leave and the case was adjourned to 10.12.2018. The copy of zimni order of 08.12.2018, which has been uploaded on the website, has been attached with the application, which shows that the case has been adjourned for 19.12.2018. Another order of same date i.e. 07.12.2018 is there vide which undersigned adjourned the case for 08.12.2018. Report from stenographer has been called and he has reported that due to typographical error, the date 19.12.2018 has been mentioned in the order and it was wrongly uploaded, although in reality, the case was fixed for 10.12.2018. The respondent checked the next date of hearing from 08.12.2018 on website, which was mentioned as 19.12.2018 and he believed the same on the said date. He filed an application for taking his written reply and there was no fault on his part as there was mistake in uploading the order. He shall not suffer due to fault in technology. So, the application is

hereby allowed and his written reply to the main petition is taken on record.”

In the order dated 29.02.2020 defence of the petitioner is again struck off due to non-filing of reply. The said order dated 29.02.2020 reads as under :-

“Today the case was fixed for filing reply by the respondent to the main petition but no reply has been filed. Perusal of the file shows that respondent has appeared in person in the Court on 26.07.2018 and thereafter inspite of allowing the application under Section 151 CPC, he has failed to file reply to the main petition till date. There is no ground to adjourn the case further for filing reply by the respondent. So, defence of respondent is struck off. Pws be produced on 24.03.2020.”

Since, vide order dated 24.01.2020, it has been held that there was no fault on the part of the petitioner and due to typographical error, the wrong date was uploaded, petitioner should not suffer due to fault in technology and written reply was ordered to be taken on record. Since there was mistake in uploading the orders and the learned Court also felt that and also allowed the opportunity to file the written reply so learned trial Court was required to give at least proper opportunity to file reply. The petitioner could not file the same under bonafide mistake.

It is well settled that procedure is the hand maid to the administration of justice. It is meant for advancement of justice. If there is any fault or clerical error or any other error on the part of the functionaries of the Court then party should not suffer. In the case in hand the learned Court held that there was technical fault and petitioner should not suffer, but without taking the reply, it is mentioned in the order that reply to the main petition is taken on record. So under such circumstances, petitioner should

not be deprived of the opportunity to defend the case. If one opportunity is granted to the petitioner-tenant to file reply then no prejudice would be caused to the respondent-landlord, who can be compensated with cost. If notice to the respondent is issued in the instant petition, then it may linger on the matter and may cause heavy financial burden on the respondent-landlord which would not be in his interest.

Thus, order dated 29.02.2020 is hereby set aside, but subject to payment of Rs.20,000/- as costs out of which Rs.5000/- to be deposited in the account of concerned legal authority and Rs.15,000/- be paid to the respondent-landlord and one opportunity is granted to the respondent to file the written reply. The payment of costs is condition precedent for filing written reply to the main petition. The learned trial Court shall fix one date on receipt of the copy of this order for filing written reply and same shall be filed positively on that day. In case of default, this order shall stand automatically vacated.

If respondent-landlord is not satisfied with this order then he can challenge this order within one month.

The present revision petition stands disposed of.

(GURBIR SINGH)
JUDGE

31.10.2023

pry

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