

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No.5736 of 2018 (O&M)

Reserved on 03.03.2023

Date of Decision : 28.03.2023

Nirmal Singh

....Petitioner

VERSUS

Kulwant Singh

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Chetan Bansal, Advocate for the petitioner.

Mr. Veneet Sharma, Advocate for the respondent.

ALKA SARIN, J.

The present revision petition has been preferred by the tenant-petitioner against the order dated 09.09.2014 whereby the application under Order IX Rule 13 of the Code of Civil Procedure, 1908 was dismissed by the Rent Controller.

Before advertng to the merits of the case, a few facts relevant to the present *lis* need to be noted. The landlord-respondent herein filed an eviction petition on 19.11.2008 under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the 'Punjab Rent Act') seeking eviction of the tenant-petitioner from the tenanted premises i.e. Private No.2, Plot No. 9, situated in Rishi Vihar, Ganda Singh Wala, Majitha Road, Amritsar on the ground of non-payment of rent and for *bonafide* personal necessity of his son, Tejpal Singh. The tenant-petitioner appeared and filed his written statement in which the relationship of landlord and

tenant was admitted and he further admitted having been inducted in one shops at a monthly rent of Rs.1250/- w.e.f. 01.03.2000. All other allegations were denied. The Rent Controller assessed provisional rent to the tune of Rs.1250/- per month w.e.f. 01.12.2007 to 16.04.2010 and the case was adjourned to 20.05.2010 for payment of provisional rent as assessed. It is the case set up by the tenant-petitioner that the counsel wrongly noted the date as 20.07.2010 and hence did not appear on 20.05.2010 and an *ex-parte* eviction order came to be passed on 20.05.2010. On 20.07.2010, since the case was not listed, an enquiry was made by the clerk of the counsel who then discovered that the case had been decided *ex-parte* and an *ex-parte* eviction order had been passed on 20.05.2010. Immediately thereafter an application was filed under Order IX Rule 13 read with Section 151 CPC for setting aside the *ex-parte* eviction order dated 20.05.2010. A reply was filed by the landlord-respondent. Vide order dated 09.09.2014 (Annexure P-1) the application for setting aside the *ex-parte* eviction order was dismissed. Against the order dated 09.09.2014, the tenant-petitioner filed an appeal before the Appellate Authority who allowed the appeal vide order dated 04.03.2015 and set aside the order dated 09.09.2014. Aggrieved by the same, the landlord-respondent preferred CR No.2628 of 2015 in this Court and vide order dated 09.07.2018 the order dated 04.03.2015 passed by the Appellate Authority was set aside holding that the Appellate Authority did not have the jurisdiction to decide the appeal as the order passed by the Rent Controller refusing to set aside the *ex-parte* eviction order was not amenable to appeal and at best could have been challenged in a revision petition before this Court. Hence, the present revision petition against the order dated 09.09.2014.

Learned counsel for the tenant-petitioner would contend that by a totally non-speaking order, the application under Order IX Rule 13 CPC has been dismissed by Rent Controller. Learned counsel for the tenant-petitioner would further contend by referring to the order dated 04.03.2015 (Annexure P3) passed by the Appellate Authority that issues were framed by the Rent Controller and evidence was also led, however, without referring to the evidence and without there being any discussion, by a totally non-speaking order, the application has been dismissed.

Per contra learned counsel for the landlord-respondent has contended that the Rent Controller has no jurisdiction to extend the time for payment of the rent due and since the arrears were not deposited on time the Rent Controller correctly passed the eviction order.

I have heard learned counsel for the parties.

In the present case the Rent Controller by a totally non-speaking order has dismissed the application under Order IX Rule 13 CPC filed by the tenant-petitioner. A perusal of the statement of RW1, Kulwant Singh, recorded on 26.07.2013 appended with the petition as Annexure P-10, clearly reveals that the landlord-respondent was ready to receive the rent. Without even adverting to the evidence on the record and without any discussion, the application has been dismissed by a cryptic and totally non-speaking order. Once the evidence was available on the record the Rent Controller ought to have dealt with the same before deciding the application under Order IX Rule 13 CPC. The impugned order is perverse and unsustainable in law and the same is accordingly set aside. The matter is remanded to the Rent Controller to decide the application under Order IX

Rule 13 CPC afresh in accordance with law. Parties to appear before the Rent Controller on 24.04.2023.

Disposed off in the above terms. Pending applications, if any, also stand disposed off.

**(ALKA SARIN)
JUDGE**

28.03.2023

jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO