

119.

2023:PHHC:158346

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-7437-2023

Date of decision: 11.12.2023

RAVINDER KUMAR ANAND

... Petitioner

Versus

SANTOSH SINGAL

... Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Ms. Gursimran Walid, Advocate for
Mr. Baljeet Beniwal, Advocate, for the petitioner.

GURBIR SINGH, J. (Oral)

1. Prayer in this revision petition filed under Article 227 of the Constitution of India is for setting aside the order dated 30.10.2023 (Annexure P-3) passed by learned Civil Judge (Junior Division), Chandigarh, whereby the defence of the petitioner-tenant has been struck off on account of non-filing of written statement and non-payment of cost so imposed upon him.

2. The brief facts, as culled out from the petition, are that the respondent-landlady filed rent petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 for the eviction of tenant, namely, Ravinder Kumar Anand, petitioner herein, on account of non-payment of rent. Though the petitioner-tenant appeared but he did not file written statement. Vide order dated 19.10.2023, he was afforded last opportunity to file written statement, but subject to payment of cost of Rs.500/- to the concerned District Legal Services Authority. But even then, he neither filed

written statement nor paid the cost. Vide order dated 30.10.2023, the trial Court struck off the defence of the petitioner.

3. Learned counsel for the petitioner has argued that the petitioner is an old man and is regularly paying rent and has been residing in the demised premises since 2014. The petitioner had asked his counsel to file written statement and to deposit the cost, but the counsel failed to do so. Moreover, cost was to be deposited in the account of concerned District Legal Services Authority and was not to be paid to the respondent-landlady. The order does not speak that written statement can only be accepted subject to payment of cost.

4. I have heard the submissions of learned counsel for the petitioner and have gone through the paper book.

5. On 19.10.2023, the trial Court passed the following order:-

“Written statement not filed. On request, the matter be listed on 30.10.2023 for filing written statement, subject to last opportunity. Cost of Rs.500/- to be paid in DLSA for the date fixed.”

6. On 30.10.2023, the following order was passed:

“Written statement not filed by respondent, despite this being last opportunity. Even cost of Rs.500/- has not been paid. The matter has been listed for filing written statement since 13.04.2023. The respondent has already availed numerous opportunities for filing written statement. No reason for adjournment of the case was stated by the counsel for respondent. Further, in view of the judgment of the Hon'ble Punjab and Haryana High Court in the case titled as "Anand Parkash v. Bharat Bhushan Rai and others", AIR 1981 P&H

269, it is mandatory for the Court to strike off the defence of the respondent on the failure of the respondent to pay costs. Accordingly, the defence of the respondent is hereby struck off by the order of the Court.

Arguments on issues heard. Record perused. From the pleadings of the petitioner and arguments advanced, following issues are hereby framed:

1. Whether the respondent is liable to vacate the demised premises for non- payment of arrears of rent, as alleged?

OPP

2. Relief.

No other issue arises or pressed upon. Onus of proof not objected to. Now to come up on 22.11.2023 for petitioner's evidence. PF, DM and list of witnesses be filed within seven days."

7. A perusal of above orders would show that the trial Court struck off the defence of the petitioner on the ground that after availing numerous opportunities, the petitioner failed to file written statement and on account of non-payment of cost.

8. In the case in hand, the order of adjournment was not subject to payment of costs. The order was silent in case the cost is not deposited in the account of concerned District Legal Services Authority then the petitioner-tenant would not be entitled to file written statement. Moreover, cost was not to be paid to the respondent-landlady and there is no mention in the order that there is any request on behalf of respondent-landlady that first cost be deposited, then written statement be filed.

9. Although there is some inaction on the part of the petitioner-tenant but keeping in view that procedure is handmaid to the administration

of justice and it is meant for advancement of justice, if one opportunity is given to the petitioner to file written statement, no prejudice would be caused to the respondent-landlady as she will be compensated with cost, so the impugned order deserves to be set aside.

10. If notice of this petition is given to the respondent-landlady, then it may cause financial burden upon her and may further linger on the decision of the case.

11. In view of above discussion, the order dated 30.10.2023 (Annexure P-3) is hereby set aside and one opportunity is granted to the petitioner-tenant to file written statement, however, that would be subject to payment of costs of Rs.10,000/- to be paid to the respondent-landlady and further the cost of Rs.500/- already imposed by the learned Rent Controller vide order dated 19.10.2023 be also deposited with the concerned District Legal Services Authority. The petitioner-tenant shall file the written statement on the date so fixed before the trial Court. In case of default, this order shall automatically stand vacated.

12. Present petition stands allowed accordingly.

13. If respondent-landlady is not satisfied with this order, she is free to file application within 30 days for recalling this order.

(GURBIR SINGH)
JUDGE

December 11, 2023
sanjeev

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No