

CR-1287-2023

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

CR-1287-2023 (O&M)

Reserved on : 14.02.2024

Pronounced on : 26.02.2024

GURINDER SINGH SETHI THROUGH HIS LRs

...Petitioners

VERSUS

YADWINDER SINGH BOPARAI

...Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Akshay Bhan, Senior Advocate with
Mr. Santosh Sharma, Advocate for the petitioners.

Mr. Nitin Thatai, Advocate
Ms. Monika Thatai, Advocate and
Ms. Simran Kaur, Advocate for the respondent.

ALKA SARIN, J.

1. The present revision petition has been preferred under Article 227 of the Constitution of India challenging the impugned order dated 21.01.2023 (Annexure P-7) passed by the learned Additional District Judge, Ludhiana reversing the order dated 23.01.2020 (Annexure P-6) passed by the learned Civil Judge (Junior Division), Ludhiana-cum-Rent Controller vide which the application under Order 7 Rule 11 CPC read with Order 9 Rule 9 CPC filed by the petitioner herein was allowed and the petition filed by the respondent herein was dismissed.

2. The brief facts relevant to the present case that the landlord-respondent filed a petition under Section 24(D) of the Punjab Rent Act, 1995 (Punjab Act No.13 of 2012) for a direction to the tenant-petitioner to put him in vacant possession of the shop as shown red in the plan annexed with the

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petition and described in detailed in the petition. The tenant-petitioner filed an application under Order 7 Rule 11 CPC read with Order 9 Rule 9 CPC for dismissal of the petition primarily on the ground that the case was barred by principles of *res judicata* as also Order 9 Rule 9 CPC as an earlier petition filed by the landlord-respondent under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 was dismissed in default on 03.01.2018. Reply was filed to the said application. The Rent Controller vide order dated 23.01.2020 allowed the application holding the rent petition to be barred under the provisions of Order 9 Rule 9 CPC. Aggrieved by the same the landlord-respondent preferred an appeal before the Appellate Authority which was allowed vide the impugned order dated 21.01.2023. Hence, the present revision petition by the tenant-petitioner.

3. Learned senior counsel appearing for the tenant-petitioner would contend that the present case was barred by the provisions of Order 9 Rule 9 CPC as the landlord-respondent, at his whims and fancies, was filing one petition after another on the same cause of action. The earlier petition under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 was dismissed due to the absence of the landlord-respondent and the landlord-respondent failed to get the same restored and had instead now filed the present petition under Section 24(D) of the Punjab Rent Act, 1995 on the same cause of action. Reliance has been placed by the learned senior counsel on the judgment of the Supreme Court in the case of **Dahiben Vs. Arvinbhai Kalyanji Bhanusali (Gajra)(D) through LRs & Ors. [(2020) 7 SCC 366]** and a judgment of the Division Bench of this Court in the case

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of **Mehtab Singh Vs. Shri Tilak Raj Arora & Anr. [1988 (1) RCR (Rent) 159]**.

4. *Per contra* learned counsel for the landlord-respondent has contended that the application under Order 7 Rule 11 CPC could not be entertained on the ground that the rent petition was barred by the principles of *res judicata* and that the same could be gone into only after evidence had been led. In support thereof learned counsel for the landlord-respondent has relied upon the judgment passed by the Supreme Court in the case of **Srihari Hanumandas Totala Vs. Hemant Vithal Kamat & Ors. [2021 (3) RCR (Civil) 768]** and a judgment of this Court in the case of **Surinder Kaur & Anr. Vs. Rattan Chand Duggal @ R.R. Duggal [2005 (2) RCR (Rent) 428]**.

5. I have heard the learned counsel for the parties

6. In the present case the brief facts need to be noticed. The tenancy in the present case was created in the year 1987. A petition under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 was filed by the landlord-respondent and vide order dated 10.09.2011 leave to contest was declined to the tenant-petitioner. CR-6870-2011 was filed by the tenant-petitioner and the same was allowed vide order dated 09.05.2017 granting leave to contest to the petitioner-tenant. On 03.01.2018 the rent petition was dismissed for non-prosecution. An application for restoration was filed by the landlord-respondent which was dismissed vide order dated 18.08.2018. Thereafter, a fresh petition was filed under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 on the ground of arrears of rent. On

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11.09.2018 provisional rent was assessed and the same was tendered by the tenant-petitioner. On 04.12.2018 the landlord-respondent withdrew the rent petition. In the year 2019 the present rent petition was filed under Section 24-D read with Section 52 of the Punjab Rent Act, 1995. During the pendency of the present rent petition an application under Order 7 Rule 11 CPC read with Order 9 Rule 9 CPC was filed by the tenant-petitioner. A reply was filed to the same by the landlord-respondent. Vide order dated 23.01.2020 the Rent Controller allowed the application holding the petition as barred under Order 9 Rule 9 CPC. The said order was reversed by the Appellate Authority on an appeal filed by the landlord-respondent vide order dated 21.01.2023. Hence, the present revision petition.

7. The Rent Controller held the rent petition barred under Order 9 Rule 9 CPC and hence dismissed the eviction petition filed by the landlord-respondent. Learned senior counsel for the tenant-petitioner has argued that the provisions of Order 9 Rule 9 CPC clearly bar the filing of a second petition on the same cause of action relying on the judgment in the case of **Mehtab Singh (supra)**. The question in the said case of **Mehtab Singh (supra)** was whether the landlord who withdraws a petition without liberty to file afresh would be barred from preferring a second one. It was held by the Division Bench of this Court that when the earlier petition was withdrawn without liberty to file afresh, a second petition would not be maintainable. The said judgment would not come to the aid of the tenant-petitioner inasmuch as the said judgment is distinguishable on facts. The present is not a case where the earlier rent petition was got dismissed as

withdrawn. In the case of **Surinder Kaur (supra)** this Court while dealing with the provisions of Order 9 Rule 9 CPC and its applicability in rent matters held as under :

“It is well settled by now that the Rent Control Legislation is a complete Code in itself and the provisions of the Code of Civil Procedure are not attracted. Although there is no dispute that certain principles of Code of Civil Procedure would be attracted, but strict provisions of the Code of Civil Procedure being not attracted, the rights of the parties cannot be decided on the basis of the application (of) provisions of the Code of Civil Procedure. Accordingly, provisions of Order 9 Rule 9 of the Code of Civil Procedure, being substantive provisions, cannot be attracted to the proceedings under the Rent Act. The learned counsel for the petitioner has also relied upon a judgment of the Apex Court in N.R. Narayan Swamy v. B. Francis Jagan, 2001 (6) SCC 473: 2001 (2) RCR (Rent) 169 (SC): 2001 (6) SCC 473. Specific attention has been drawn to paras No.16 and 22 of the judgment which read as under:-

In our view, the High Court ought to have considered the fact that in eviction proceedings under the Rent Act the ground of bona fide requirement or non-payment of rent is a recurring

cause and therefore, the landlord is not precluded from instituting fresh proceedings. In an eviction suit on the ground of bona fide requirement the genuineness of the said ground is to be decided on the basis of requirement on the date of the suit. Further, even if a suit for eviction on the ground of bona fide requirement is filed and is dismissed, it cannot be held that once a question of necessity is decided against the landlord he will not have a bona fide and genuine necessity even in future. In the subsequent proceedings, if such claim is established by cogent evidence adduced by the landlord, decree for possession could be passed.

In this view of the matter, in our view it is not necessary to decide the further contention of the learned counsel for the appellant that the Rent Act is a self-contained code and the provisions of CPC as a whole are not applicable to the proceedings under the Rent Act.”

8. The question of whether the present petition is barred by principles of *res judicata* would be a matter of evidence. Though the facts of the earlier petition find mentioned in the present petition for ejectment, however, it would be a question to be gone into by the Rent Controller as to whether the present petition is barred by the principles of *res judicata*. Moreover, it is to be noticed that the earlier eviction petition was filed under

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the provisions of the East Punjab Urban Rent Restrict Act, 1949 while the present petition has been filed under the provisions of the Punjab Rent Act, 1995. It also cannot be lost sight that the earlier eviction petition was filed in 2007 while the present one was filed in 2019. Circumstances are bound to change in twelve years. Learned senior counsel appearing on behalf of the tenant-petitioner has not been able to convince this Court that the order of the Appellate Authority reversing the order passed by the Rent Controller is illegal or without jurisdiction. In view thereof, I do not find any merit in the present petition and the same is accordingly dismissed. Pending applications, if any, also stand disposed off.

9. It is made clear that any observations made herein shall not be treated as an expression of opinion on the merits of the case.

26.02.2024
Aman Jain

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No