

(2012) 10 P&H CK 0167

High Court Of Punjab And Haryana At Chandigarh

Case No: CR No. 6119 of 2012 (O and M)

Raghubir Goel

APPELLANT

Vs

Sushil Kumar Advocate

RESPONDENT

Date of Decision: Oct. 15, 2012

Acts Referred:

- Haryana Urban (Control of Rent and Eviction) Act, 1973 - Section 15(6)

Hon'ble Judges: Jaswant Singh, J

Bench: Single Bench**Advocate:** Nand Lal Sammi, tenant/JD, for the Appellant;**Final Decision:** Dismissed

Judgement

@JUDGMENTTAG-ORDER

Jaswant Singh, J.

Petitioner(tenant)/Judgment Debtor is in revision u/s 15(6) of the Haryana Urban (Control of Rent & Eviction) Act, 1973 against the order dated 26.09.2012 passed by learned Rent Controller, Jagadhari whereby his objections have been dismissed. In brief, facts of the case are that decree holder/respondent had filed an ejectment petition against the petitioner(tenant)/JD seeking his ejectment in which the petitioner(tenant) was proceeded ex-parte vide order dated 18.03.2009. Thereafter, during the execution proceedings summons were sent to the petitioner(tenant) and was asked to be present on 29.01.2010 in the execution application, when the present application was moved whereby objections have been filed to the effect that he was never served notice in the main eviction petition and further stated that he has also filed an application for setting aside ex-parte order before the competent court and thus the execution cannot proceed further.

2. Upon notice, decree holder/respondent filed a reply whereby it was stated that the petitioner(tenant) was in fact proceeded ex-parte way back on 4.4.2006 and it was after a long time that the eviction order was passed against the present

petitioner and, therefore, it is not believable that the petitioner was not in knowledge of the proceedings of the present application and as a matter of fact it is a tactic to delay the matter.

3. After hearing learned Counsel for the parties, learned Executing Court vide impugned order dated 26.09.2012 dismissed the application. Hence the present revision.

4. I have heard learned Counsel for the petitioner(tenant)/JD and have gone through the case file carefully with his able assistance.

5. Learned Counsel for the petitioner(tenant)/JD has argued that the learned Executing Court has failed to take into consideration the fact that the JD/tenant was never served in the main eviction proceedings and furthermore, it was a specific case of the JD/tenant that the respondent(landlord)/decree holder is not his landlord and it is in fact one Ashok Kumar who is the landlord and thus the ejectment proceedings itself is an abuse of process of law as being not maintainable.

6. After hearing learned Counsel for the petitioner(tenant) and going through the case file carefully, this Court is of the considered opinion that the present petition is devoid of merit and the same deserves to be dismissed. The learned Rent Controller has rightly enumerated the conduct of the petitioner(tenant) during the proceedings for eviction. The relevant portion of the said order is being reproduced hereunder for sake of convenience:-

The rent petition was filed against the respondent on 09.04.2002 and thereafter, notice issued to tenant Raghubir Goel returned back with report of refusal and accordingly, his presence was ordered to be secured through munadi for 10.12.2002. On 10.12.2002, munadi was received back duly effected against him but he did not appear and accordingly proceeded against ex-parte. However, thereafter the file was taken up again on the same day i.e. 10.12.2002 and power of attorney was filed on his behalf. It means that he was watching the proceedings of the present case and when he proceeded against ex-parte, he appeared on the same day through his counsel. It shows the malafide on the part of the objector-JD Raghubir Goel from the starting of litigation. It is submitted on behalf of applicant that it was the duty of the Rent Controller to make an order for assessment on the appearance of respondent, however, it is pertinent to mention here that the case was fixed for tender of rent on behalf of tenant for 20.12.2002, but the file was take up twice and when the case was fixed for 24.12.2002, before the presiding officer, the tenant himself made a statement that the petitioner is not his landlord and, therefore, he did not want to make the tender to him. Therefore, the contention of the learned Counsel for the applicant that the order of assessment was not made by Rent Controller, is without any merit.

It is further case of the applicant that Court of Ms. Kumud Gugnani, the then learned Rent Controller, Jagadhari, was abolished and it has been told by his earlier Counsel

as well as Reader of that Court that no date has been fixed in this case and notice to him will be served by transferee court for further proceedings. However, this contention of the applicant is without any merit because a perusal of the case file reveals that the case filed was received by transfer on 30.01.2006 and on the said date, he was never proceeded against ex-parte. Rather on the said date, the case was adjourned for 4.4.2006 for consideration on the application for amendment of petition and thereafter, on the next date of hearing on 4.4.2006 the applicant did not appear till 2.50 PM and he was proceeded against ex-parte after waiting sufficiently. Therefore, there is not merit in the contention of the applicant that his counsel as well as Reader of Abolished Court informed him that notice will be served to him by the transferee court later on for further proceedings. Moreover, Hon"ble High Court of Delhi in case titled as DVH Industries case(supra) has held that the subsequent service of notice is not necessitated as the party had chosen to stay away from the hearings despite specific knowledge of the pendency of the present case. The above mentioned authority is fully applicable to the case because in this case also the applicant was duly served in the rent petition and he was also represented through his counsel, but he did not appear after 4.4.2006 and thereafter chosen to stay away from the hearings of the said petition till 18.03.2009 when exparte order has been passed against him. It is not explained by the applicant that as to why he did not contact his counsel for a long period of three years from the date of proceeded exparte till passing of eviction order against him. As is clear from the above facts, the entire endeavour of the petitioner(tenant) was to delay the proceedings and harass the landlord in one manner or the other and at no point of time the petitioner(tenant) was serious enough to challenge the proceedings in a fair manner and disentitle the respondent(landlord) by proving that he is in fact not the landlord.

It is pertinent to point out here that the challenge to the maintainability of the proceeding itself can be made in the main ejectment proceedings and not in execution application as the Executing Court cannot go behind the decree/order and it is bound by the same. Since, the petitioner(tenant) has not been able to show sufficient cause for his non appearance before the court at the time of trial, this Court is of the opinion that the petition as well as the objections that have been raised are completely misconceived and the same are hereby rejected on merits as well.

In view of the above, finding no merit in the present revision petition, the same is hereby dismissed.