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(2011) 2 RCR(Civil) 810

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R. No. 723 of 2011 (O and M)

Arun Kumar APPELLANT

Vs

Sat Pal RESPONDENT

Date of Decision: Feb. 17, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 8 Rule 1

Citation: (2011) 2 RCR(Civil) 810

Hon'ble Judges: Rakesh Kumar Jain, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Rakesh Kumar Jain, J.
This revision petition is directed against the order dated 30.11.2010 passed by the learned Rent Controller, Chandigarh by which defence of the Petitioner was struck off on the ground that he did not file the written statement in time.

2. Learned Counsel for the Petitioner submits that notice in the eviction petition was issued or. 10.02.2010 for 04.05.2010. On the adjourned date, the Petitioner had appeared through counsel and case was adjourned to 17.07.2010 for the purpose of filing of written statement. On 17.07.2010, written statement was not filed and the case was adjourned on the request of counsel for the Petitioner. On the adjourned date, again written statement was not filed. At that time, the Petitioner had filed an application for production of certain documents by the Respondent/landlord. A copy of the application was supplied and the case was adjourned to 04.09.2010 for filing of reply. On 04.09.2010, the Court was on leave, therefore, the matter was taken up on 06.09.2010 and it was adjourned to 30.10.2010 for the same purpose. On 30.10.2010, no reply was filed by the Respondent/landlord, but still the application filed by the Petitioner for production of documents was dismissed and the case was adjourned to 30.11.2010 for filing of written statement. On the said date also, the written statement was not filed and

as such, the defence of the Petitioner was struck off.

3. Learned Counsel for the Petitioner has made two submissions. Firstly, the written statement could not be filed earlier as the Petitioner wanted to prepare the written statement on the basis of the documents which are sought to be produced by the Respondent/landlord. However, the application for production of documents was dismissed and on the next date, the defence of the Petitioner was struck off but now he is ready with the written statement. Secondly, the proviso to Order 8 Rule 1 of the Code of Civil Procedure, 1908 [for short "CPC"] is not held to be mandatory.

4. On the other hand, learned Counsel for the Respondent has submitted that the Petitioner has been casual in filing of the written statement, therefore, he should not be awarded for his laxity by granting an order in his favour. It is also submitted that even if this Court is inclined to grant one more opportunity to the Petitioner for filing of written statement, it should be subject to payment of heavy costs.

5. I have heard both learned Counsel for the parties and perused the record with their able assistance.

6. The Petitioner could have filed the written statement earlier but he thought it fit to file it after obtaining certain documents from the Respondent/landlord and for that purpose he had filed the application which was eventually dismissed on 30.10.2010. Thereafter, on the very next date his defence was struck off. Moreover, the proviso to Order 8 Rule 1 is held to be directory and not mandatory. Keeping in view the facts and circumstances of this case, the Petitioner is liable to pay costs to the Respondent because he has been dragged to this Court only because of his fault.

7. In view of the above discussion, the present revision petition is allowed subject to the payment of Rs. 10,000/- as costs which shall be paid by the Petitioner to the Respondent by way of demand draft. The Petitioner shall file the written statement on the date which is now fixed before the learned Rent Controller. It is made clear that if the written statement is not filed on the date fixed, no further opportunity shall be granted to him and if the cost is not paid by the Petitioner within 2 weeks from today, this revision petition would be deemed to be dismissed.