
(1976) 01 P&H CK 0026
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 598 of 1974

J.D. Dhanda

APPELLANT

Vs

Des Raj Nayyar and Another

RESPONDENT

Date of Decision : 23-01-1976

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 11

Citation : AIR 1976 P&H 339 : (1977) 1 ILR (P&H) 372

Hon'ble Judges : R.S. Narula, C.J

Bench : Single Bench

Advocate : Roshan Lal Sharma, for the Appellant; V.P. Sarda, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Narula, C.J.—This is a petition for revision of the order of the Court of the Rent Controller, Ludhiana, dated March 2, 1974, striking out the defence of the petitioner in the proceedings u/s 13 of the East Punjab Urban Rent Restriction Act, 1949, on the ground that he failed to comply with the order of the Court dated November 16, 1973, to file reply to the interrogatories which had already been delivered to the petitioner by the opposite party with the leave of the Court. The application under Rule 1 of Order XI of the CPC for leave to deliver the interrogatories is said to have been made on September 18, 1973. The interrogatories were thereafter served on the petitioner in pursuance of the leave granted by the Rent Controller. On November 1, 1973, the petitioner raised objections against the interrogatories which were dismissed by order dated November 16, 1973. While dismissing another set of objections on December 14, 1973, the Rent Controller further directed as follows:--

"He (the present petitioner) is given one more opportunity to file the reply to the interrogatories on or before 5-1-1974, subject to payment of costs Rs. 20/-."

Despite the above mentioned order of the Rent Controller, the petitioner did not file any reply to the interrogatories which had already been delivered to him. A

petition for revision (No. 149 of 1974) of the order of the trial Court dated November 16, 1973, was dismissed by this Court on January 24, 1974. The application of the opposite party under Order XI, Rule 21 of the CPC (hereinafter referred to as the Code) for striking out the defence of the petitioner was allowed by the Rent Controller on March 2, 1974.

2, The only contention raised by Mr. Roshan Lal Sharma, learned counsel for the petitioner, in this case is that the Rent Controller had no jurisdiction to strike out the defence of his client merely on the basis of the leave granted to deliver the interrogatories without passing an order under Rule 11 of Order XI of the Code directing the petitioner to file reply to the interrogatories. Rules 11 and 21 of Order XI of the Code read as follows:--

"11. Where any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the Court for an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer or answer further, either by affidavit or by viva voce examination, as the Court may direct."

"21. Where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the Court for an order to that effect, and an order may be made accordingly."

3. The language of Order XI, Rule 21 of the Code is plain and clear. It states that an order striking out the defence of a defendant, to whom interrogatories have been delivered with the leave of the Court, can be passed only where the defendant fails to comply with "any order to answer" the interrogatories. The mere grant of leave to deliver interrogatories does not amount to such an "order". There is, however, no specific form in which an order under Order XI, Rule 11, of the Code has to be passed. Nor does Rule 11 envisage any magic incantation which alone may be treated as an order to answer the interrogatories. It is enough if the intention of the order can be clearly spelt out of the direction given by the Court. We cannot lose sight of the fact that in the present case in spite of the interrogatories having been delivered to the petitioner sometime in September, 1973, he had failed to answer them. Even then, if the order of the Rent Controller had stopped with dismissing the objections of the petitioner against the interrogatories, there would have been much force in what the learned counsel has submitted. Unfortunately for the defendant, the learned Rent Controller did not stop with dismissing the objection petition but added the above mentioned specific direction which could only be made under Order XI, Rule 11 of the Code. The mere fact that instead of directing the defendant in so many words to file replies to the interrogatories, the Court ordered that the defendant was being given one more opportunity to file the replies, does not, in the

circumstances of this case, amount to no order having been passed by the Court as envisaged by Order XI, Rule 11 of the Code. I am unable to find any escape from holding that the last sentence in the order of the trial Court dated December 14, 1973, (already quoted in an earlier part of this order) clearly amounted to an order to answer the interrogatories. That order was admittedly not complied with. The defendant-petitioner omitted to answer those interrogatories. The impugned order has, therefore, not been passed without complying with Order XI, Rule 11 of the Code. The order was within the jurisdiction of the Rent Controller. That being so, there is no ground to interfere with the same. This revision petition must, therefore, fail and is accordingly dismissed, though without any order as to costs.