

of the landlord who is retarded one still needs a separate room or is to be accommodated with the parents in one room also rests to be determined on the state of condition of the child. Straightaway it could not be held either way that he must sleep in the bed room of his parents or he must be kept in a separate bed room. It may be stated that at this stage the tenant is not required to prove his plea of sufficiency of accommodation with the landlord. He is only required to raise such a plea, if proved, the same would disentitle the landlord to have possession of the premises in a summary manner. In the peculiar facts of the present case, as discussed above, leave to defend should have been granted.

(6) For the reasons recorded above, this revision petition is allowed and the impugned order is set aside. Leave to defend the case is allowed to the tenant. Parties through their counsel are directed to appear before the Rent Controller, Chandigarh, on March 4, 1991. There will be no order as to costs.

P.C.G.

Before A. L. Bahri, J.

SARWAN RAM & ANOTHER,—Petitioners.

versus

HARNEK SINGH & ANOTHER,—Respondents.

Civil Revision No. 1849 of 1990.

31st July, 1990.

Code of Civil Procedure, 1908 (Act V of 1908)—S. 151, O. 41; rl. 11—Unanimous resolution of Bar Association to strike work—Non-appearance of counsel—Listing of case in cause list—Whether amounts to grant of sufficient opportunity of being heard.

Held, that fixing of the case for hearing in the 'cause list' is a sufficient notice to the Advocate and sufficient compliance of the provisions of the Code of Civil Procedure for affording an opportunity to the counsel to present his case. O. 41. rl. 11 of the Code of Civil Procedure, which applies to appeals, provides for fixing a date of hearing and if the counsel appears on that date, to be heard. The same principle can legitimately be applied to the Civil Revisions. If the Court has given opportunity of hearing to the counsel and the counsel absents it can be taken as sufficient opportunity of hearing being given. (Para 5)

Sarwan Ram & another v. Harnek Singh & another (A. L. Bahri, J.)

Application under Section 151 of the Code of Civil Procedure Praying that the ex parte order dated 11th July, 1990 may kindly be recalled and the aforementioned revision petition be set down for re-hearing as the stay has been prayed for therein.

L. N. Verma, Advocate, for the Petitioners.

JUDGMENT

(1) On July 11, 1990 Civil Revision was dismissed and the order was passed as under :—

“Counter claim submitted at the time of filing written statement cannot be excluded. Dismissed.”

(2) This order was passed in the absence of the counsel for the petitioners. The present application has been filed under Section 151 of the Code of Civil Procedure for recalling the said order. The grounds mentioned therein briefly are to the following effect :—

(3) On July 11, 1990 counsel for the petitioners could not appear in Court in view of the unanimous resolution of the High Court Bar Association. Non-appearance of the counsel for the petitioners was not wilful or deliberate, but was due to the circumstances entirely beyond his control. The Revision Petition was dismissed, because the correct facts and circumstances could not be brought to the notice of the Court. The High Court Bar Association unanimously resolved on July 16, 1990 that the members of the Bar, whose cases had been dismissed/decided *ex parte* during the relevant period, may move applications for setting aside *ex parte* orders and for recalling the *ex parte* orders and that the Members of the Executive Committee of the Association would appear therein on their behalf. That is why according to the petitioners, the present application has been filed.

(4) I have heard Shri L. N. Verma on merits also.

(5) Fixing of the case for hearing in the ‘cause list’ is a sufficient notice to the Advocate and sufficient compliance of the provisions of the Code of Civil Procedure for affording an opportunity to the counsel to present his case. Order 41 Rule 11 of the Code of Civil Procedure, which applies to appeals, provides for fixing a date of hearing and if the counsel appears on that date, to be heard. The

same principle can legitimately be applied to the Civil Revisions. If the Court has given opportunity of hearing to the counsel and the counsel absents it can be taken as sufficient opportunity of hearing being given.

(6) It is not for this Court to make any comments on the causes for which the Bar Association had given call for strike. However, the fact remains that the counsel absented from the Court intentionally and deliberately and in that case he should visualise the consequences that can flow therefrom. *Per se* on the grounds that the counsel abstained from the Court on account of the call given by the Bar Association for strike cannot be a ground for restoration of the case which has been disposed of. In the present case, as already stated above, the Revision Petition was disposed of on merits. That being the position, that order cannot be considered simply dismissal of the appeal on account of non-appearance of the counsel.

(7) Even on merits, I have heard counsel for the petitioners and find no substance therein. From the perusal of the written statement, produced by the counsel, I find that counter claim was made therein. The judgment on which reliance is placed by counsel for the petitioners in *Bank of Baroda v. Gurcharan Singh*, (1), is not at all applicable to the case in hand on facts. Therein a written statement was sought to be amended to include the counter claim and it was held that the same could not be permitted. In the present case, as already stated above, counter claim was made in the written statement, which is also the requirement of the Code. Such a counter claim simply cannot be ignored on the ground that it should have been separately filed before filing the written statement. The rules of the Code of Civil Procedure are meant to advance justice and on these technicalities the administration of justice is not going to be hampered.

(8) For the reasons stated above, this Misc. Application is dismissed.

P.C.G.

(1) 1986 P.L.J. 43.