

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.3863 of 2015
Date of decision: 01.12.2015

Satish Kumar

... Petitioner

Versus

Naresh Kumar and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. D.S. Gurna, Advocate for the petitioner.
Mr. Amarjit Markan, Advocate for the respondents.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

ARUN PALLI J. (Oral)

Vide order being assailed, dated 20.05.2015, rendered by Civil Judge (Jr. Divn.), Rajpura, application moved by the tenant-respondent No.1, to prove the document/compromise dated 16.07.2008, by leading secondary evidence, was accepted. The reasons recorded by the Rent Controller in support of its order read as thus:

“5. Perusal of the file reveals that the petitioner has filed present petition under section 13 of East Punjab Rent Restriction Act for eviction of respondent on the ground of personal necessity. Case was fixed for evidence of respondent when present application has been filed for leading secondary evidence. Perusal of file further reveals that application for production of the documents has already been disposed off. Section 65 of the Indian

Evidence Act provides for cases in which secondary evidence may be given. Section 65(a) of Indian Evidence Act provides that when original is shown or appeared to be in possession of person against whom document is sought to be proved then secondary evidence can be given after notice as per section 66 of Indian Evidence Act. In present case applicant/respondent has alleged that one compromise was executed on 16.7.2008 in which it was agreed between the parties that he will vacate some portion for the shop for use of the petitioner and on the other hand petitioner has alleged that no such writing was ever executed. Perusal of file further shows that the present petition has been filed on the ground of personal necessity. Respondent has availed various opportunities to conclude evidence. Keeping in view the facts and circumstances of the legal provision, present application stands allowed subject to condition that only two effective opportunities will be granted to respondent to conclude entire evidence.”

Ex facie, the Rent Controller failed to analyze and appreciate the very basis on account of which tenant-respondent No.1 was seeking to prove the alleged compromise dated 16.07.2008, by way of secondary evidence. The necessary requirement and the circumstances, in which such a prayer could be countenanced, have also not been examined. Rather, the order under challenge gives an impression that the court was only affording two effective opportunities to respondent No.1 to conclude his entire evidence.

Having argued the matter at some length, learned counsel for the parties reached a consensus that let the order dated 20.05.2015 be set aside and the Rent Controller be directed to re-decide the application, moved by tenant-respondent No.1, with a liberty to supplement the said application with better particulars, if necessary, and likewise petitioner too shall have a right to respond to the supplemented material.

That being so, the order dated 20.05.2015 is set aside and the matter is remitted to the Rent Controller, Rajpura, for re-decision of the application moved by tenant-respondent No.1, strictly in accordance with law. And, pass an order afresh within a period of one month from the receipt of certified copy of this order.

Needless to assert, this order shall not constitute any expression of opinion on merits of the claim of either party.

Revision petition is disposed of in the above terms.

December 1, 2015
Rajan

(Arun Palli)
Judge