

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.5064 of 2015
Date of decision: 11.08.2015

M/s Haryana Foam House

... Petitioner

Versus

Ram Saran Banga

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. SK Chaudhary, Advocate for the petitioner.

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 17.07.2015 (Annexure P3), rendered by Rent Controller, Faridabad, the prayer of the petitioner-tenant for leading additional evidence has since been rejected.

In an eviction petition filed by the respondent-landlord, the ejectment was sought on account of personal necessity of his son, namely, Sanjeev Banga. The respondent-landlord led and closed his evidence on 15.04.2015. Even the evidence of the petitioner-tenant was closed on 29.05.2015. It is at that stage, the application in question (Annexure P1) was moved by the petitioner-tenant seeking opportunity to lead additional evidence and examine his son, who was purported to be well aware of the facts of the case as also the health

issues the son of the landlord, namely, Sanjeev Banga, suffering from. And, show that he was incapacitated to carry out any business and thus, the alleged need to occupy the premises lacked bonafides.

Learned Rent Controller, on an analysis of the matter in issue, arrived at a conclusion that for the petitioner to succeed, he was required to show that the proposed evidence was either not in his knowledge or could not be produced despite due diligence, when he actually led and closed his evidence. And since the petitioner failed to meet and satisfy either of the two requirements, application being devoid of merit, was dismissed. The conclusion recorded at by the Rent Controller reads as thus:

“Respondent wants to cross-examination his son as a witness in the present case. Respondent cannot take the plea that he had no knowledge about the fact that his son was well conversant with the factual situation of the present case at any earlier stage. Respondent has also not averred any ground in his application as to why he did not produce his son as a witness in his support at any earlier date fixed for respondent evidence.

Additional evidence to be led by respondent could have been allowed by the Court, if respondent would have succeeded in satisfying to the Court that the evidence was not within the knowledge of respondent at any earlier stage or that the respondent could not produce the alleged evidence despite due diligence. Respondent, in the present case has failed to show either of these grounds and

thus, there seems no merit in the application filed by the respondent. Hence, the application in hand stands dismissed. Now, the case is adjourned to 22.07.2015 for rebuttal evidence, if any, otherwise for arguments.”

I have heard learned counsel for the petitioner and perused the paper book.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant petition is wholly devoid of merit and is thus liable to be dismissed for the reasons that are being recorded hereinafter.

Concededly, the eviction of the petitioner was sought on the ground of personal necessity as the landlord required the demised premises to settle his son, namely, Sanjeev Banga. Respondent-landlord closed his evidence on 15.04.2015. Thereafter, the matter was posted for 27.04.2015, for recording the petitioner's evidence. As no evidence was led, the matter was adjourned to 13.05.2015. But the position remained the same even on the adjourned date and the matter was adjourned to 26.05.2015. And again on 26.05.2015, as no evidence was led, the matter was further adjourned to 29.05.2015. And on 29.05.2015, evidence of the petitioner was recorded. He was cross-examined by the counsel for the respondent-landlord and the petitioner closed its evidence. Ex facie, petitioner was duly conscious of the case set out by the respondent-landlord and the fact that eviction was being

sought on account of the alleged need/requirement of his son i.e. Sanjeev Banga. All this while, if at all, the testimony of the son of the petitioner was indeed crucial, petitioner-tenant could very well examine him as a witness. And he can even hardly maintain that the proposed evidence was either not in his knowledge or could not be led despite due diligence. As indicated above, he had availed due and complete opportunity to lead his evidence. Apparently, the application was moved by the petitioner to fill up the lacunas and improve upon his case. As also to delay the proceedings.

That being so, no interference is warranted, in exercise of revisional jurisdiction under Article 227 of the Constitution of India. Petition being devoid of merit is accordingly dismissed.

August 11, 2015
Rajan

(Arun Palli)
Judge