

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.5238 of 2015(O&M)
Date of decision: 02.12.2015

Krishan Kumar

... Petitioner

Versus

Mohan Lal (since deceased) through his LRs

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Rose Gupta, Advocate for the petitioner.
Mr. Suman Jain, Advocate for the respondent.

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

ARUN PALLI J. (Oral)

Vide order being assailed, dated 29.07.2015, rendered by the Rent Controller, Hisar, application moved by the tenant-petitioner to disallow the evidence of Arvind Kumar (PW5), landlord, in terms of the provisions of Order 18 Rule 3-A of the Code of Civil Procedure, had since been dismissed.

Concededly, Mohan Lal son of late Pandit Pushkar Dutt filed an eviction petition and ejectment of the tenant-petitioner was sought on account of arrears of rent and as the demised premises had become unfit and unsafe for human habitation. For, during the pendency of the proceedings Mohan Lal (landlord) passed away, his widow, two sons and a daughter were brought on record as his legal representatives.

Landlord-respondents, in support of their claim, examined a few witnesses as also the widow of late Mohan Lal, namely, Sumitra Devi on 06.02.2015. Examination-in-chief of the son of the landlord, namely, Arvind Kumar, was also recorded on 09.07.2015. And twice the matter was adjourned, pursuant to the request of the counsel for the tenant, to cross-examine the said witness. But subsequently, rather an application was moved, in reference to the provisions of Rule 3-A of Order 18 of the Code of Civil Procedure [CPC], to disallow Arvind Kumar to appear as his own witness. It was maintained that if Arvind Kumar intended to appear as his own witness, he could examine himself before examining his other witnesses, and at this stage his evidence could not be recorded except with the prior permission of the court. But as the said application was dismissed by the Rent Controller, vide order dated 29.07.2015, tenant is in revision before this court. The operative part of the said order reads as thus:

“6. In the instant case, the examination in chief was recorded on dt. 09.07.2015 through affidavit, on such date counsel for Respondent sought adjournment for cross examination, again on dated 13.07.2015 witness was present but counsel for respondent again sought adjournment. Adjournment was granted subject to cost of Rs. 500/-. Now counsel for respondent filed application for not recording the evidence of this witness Arvind Kumar. After considering the law laid down by Hon’ble High Court, this Court is of considered

view that the respondent should oppose the recording of evidence before tendering his affidavit as examination-in-chief but he failed to do so. Accordingly this application is not maintainable in the eyes of law and stands dismissed. Now to come up on 1.8.2015 for cross-examination of witness Arvind Kumar. It shall be the last opportunity for respondent to cross-examine the witness.”

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

It would be apposite, at this juncture, to refer to the provisions of Order 18 Rule 3-A of the Act and the same read as thus:

“3A. Party to appear before other witnesses. – Where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the Court, for reasons to be recorded, permits him to appear as his own witness at a later stage.”

The issues whether the provisions of Rule 3-A of Order 18 of the Code of Civil Procedure are mandatory in nature or whether a party can appear as his own witness, even after he has examined other witnesses, and if yes, what would be the procedure to follow, are not res integra. The Full Bench of this court in **Amritsar Improvement Trust, Amritsar v. Ishri Devi**, 1979(2) ILR (Punjab) 220, has concluded as thus:

“Held, that a bare reference to the language of Rule 3-A of Order 18 of the Code of Civil Procedure 1908

would make it manifest that the Legislature has undoubtedly laid down the rule that a party appearing as his own witness must so appear before any other witness on his behalf has been examined. However, in equally express terms one exception to the said rule has also been provided by the Legislature itself. This is that with the permission of the Court a party for sufficient cause may be allowed to appear even at a stage subsequent to the examination of one or all of his witnesses. The rule requiring a party to step into the witness-box first is, therefore, not an inflexible one and can be relaxed with the permission of the Court. The language of the statute does not in any way prescribe the precise time at which the permission to appear later is to be secured. It does not say that this must necessarily be in the very first instance before any witness has been examined on his behalf. The statute is, therefore, silent as to the stage at which the permission is to be secured. Nor can it be said that by necessary intendment the Legislature has laid down that the said permission must be sought at the very inception of the evidence and not later. Indeed, when broadly construed, the intention of the Legislature appears to be that the normal and the ordinary rule prescribed now is that the party appearing as his own witness should do so before any one of his witnesses. However, the rule is not an inflexible or a sacrosanct one and may be expressly deviated from with the permission of the Court based on adequate reasons. No specific stage being prescribed or fixed by the statute for securing such permission, a party may perhaps as a matter of abundant caution apply at the stage of commencing his evidence and get the necessary permission and

equally, if a sufficient ground is made out, he may secure the same at a later stage.”

Ex facie, the provisions of Rule 3-A of Order 18 of CPC are clear, concise and incapable of any misconstruction. A party to the lis, if wishes to examine himself as a witness, then he shall so appear before any other witness on his behalf is examined. However, he can also appear and depose even at a subsequent stage, but only with the permission of the court, which is mandatory and shall be granted for reasons to be recorded. The provision does not postulate any precise time or stage by which any such permission has to be secured. But, of course, before a party concludes his evidence.

And if one adverts to the order, that is being assailed, again the only reason assigned by the Rent Controller in support thereof is; For, the examination-in-chief of Arvind Kumar (PW5) had already been recorded on 09.07.2015 and the matter was adjourned twice for his cross-examination, therefore, if the tenant had any such objection, it could only be raised before his examination-in-chief was recorded. Thus, the application moved by the tenant was not maintainable. Without a doubt the order under challenge is the result of apparent misconstruction of the provisions of Order 18 Rule 3-A of the Act.

For a party to examine itself at a subsequent stage or after it has already examined its other witnesses, it is the

permission of the court which is mandatory, and it is hardly of any consequence that tenant-petitioner never objected when the examination-in-chief of Arvind Kumar (landlord) was recorded. For that matter, even if the said witnesses had even been cross-examined, it would have made no difference, as in the absence of the permission of the court any such evidence would be inadmissible and shall have to be struck off the record. **But despite that being so, a simple but a significant question that arises for consideration is; whether provisions of Order 18 Rule 3-A of CPC shall apply to the proceedings under the Rent Act?**

Concededly, as indicated above, eviction of the tenant-petitioner is being claimed under the provisions of Haryana Urban (Control of Rent & Eviction) Act, 1973 [for short, 'the Rent Act']. The position of law is well settled, that the Rent Act is a complete Code in itself. Needless to assert, the authorities under the Act are *persona designata* and entitled to devise their own procedure. And the authorities under the Act cannot go beyond its provisions to arm themselves with power which a civil court normally has under the Code of Civil Procedure. The applicability, and the extent to which the authorities under the Act are guided by certain principles of the Code of Civil Procedure, can be deciphered from the provisions of Sections 14, 16 & 18 of the Rent Act as

also Rule 7 of the Haryana Urban (Control of Rent & Eviction) Rules, 1976 (for short, 'Rules'), which read as thus:

“14. Decisions which have become final not to be reopened.-- The Controller shall summarily reject any application under sub-section (2) or (3) of section 13 which raises substantially the issues as have been finally decided in any former proceedings under this Act.

15. x x x x x x x x x

16. Power to summon and enforce attendance of witnesses.-- An authority exercising powers under this Act shall have the same powers of summoning and enforcing the attendance of witnesses and compelling the production of evidence as are vested in a court under the Code of Civil Procedure, 1908.

17. x x x x x x x x x

18. Execution of orders.-- Every order made under the provisions of this Act shall be executed by a civil court having jurisdiction in the area as if it were a decree or order of that court.

x x x x x x x x x x

x x x x x x x x x x”

“Rule 7. Procedure to be adopted by Controller – Section 23. – (1) When an application under the Act is presented to the Controller he shall fix the date, time and place at which the enquiry in respect of the application will be held and send a notice along with a copy of the application to each respondent in Form “A” appended to these rules.

(2) The Controller shall give to the parties, a reasonable opportunity to state their case. He shall also record the evidence of the parties and witnesses examined on either side and in doing so and in fixing dates for hearing of parties and their witnesses, in

adjourning proceedings and dismissing application for default or for other sufficient reasons, the Controller shall be guided by the principles of the procedure as laid down in the Code of Civil Procedure.”

A plain reading of the provisions of Section 14, reproduced above, shows that doctrine of *res judicata* shall apply even to the proceedings under the Rent Act, and for an obvious reason, for the doctrine is based on public policy and justice. No doubt, Section 16 envisages that authorities under the Act shall have the same power as are vested in a Court under the Code of Civil Procedure but only for the purpose of summoning and enforcing the attendance of the witnesses. And Section 18 postulates that every order made under the Act shall be executed by a Civil Court as if it was a decree passed by that Court.

Likewise, what is required to be noticed in Rule 7 of the Rules is **“the Controller shall be guided by the principles of the procedure as laid down in the Code of Civil Procedure.”**

Apparently, the Controller is only guided by the principle of procedure laid down in the Code of Civil Procedure, and that too, only for the purpose specifically indicated in the rule. And is, thus, not obliged to adhere to any specific provision of the Code of Civil Procedure, except for summoning and enforcing attendance of the witnesses in

terms of Section 16 of the Act. Therefore, even by the most convenient construction of these provisions, the other provisions of the Code of Civil Procedure cannot be brought in either expressly or by necessary implication. Meaning thereby, strict provisions of CPC shall not apply to the proceedings under the Act and only those provisions of the Code shall be made applicable, which the Act specifically provides.

Thus, the only and the inevitable conclusion that could be reached is that provisions of Rule 3-A of Order 18 of CPC shall not apply to the proceedings under the Rent Act.

In the wake of the position, as sketched out above, the reason assigned by the Rent Controller in support of its order is wholly erroneous and accordingly, the order dated 29.07.2015 is set aside. But yet, the prayer made by the tenant-petitioner; “Disallow the landlord Arvind Kumar to appear as his own witness”, cannot be countenanced and is accordingly rejected. As a result, the revision petition is dismissed.

Learned counsel for the landlord-respondent submits that eviction petition was filed as back as on 17.03.2011, and is thus pending for the past over four years. That being so, the Rent Controller, Hisar, is requested to decide the same as expeditiously as possible, but in any case

within a period of six months, from the receipt of certified copy of this order.

December 2, 2015
Rajan

(Arun Palli)
Judge