

C.R. No. 2189 of 2016 (O&M) and another connected case 1

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of Decision: 03.08.2016

C.R. No. 2189 of 2016 (O&M)

Rajinder Singh

.....PETITIONER

VERSUS

Pawan Kumar

.....RESPONDENT

C.R. No. 2201 of 2016 (O&M)

Rajinder Singh

.....PETITIONER

VERSUS

Pawan Kumar

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Anil Kshetarpal, Sr. Advocate,
with Mr. Saurabh Garg, Advocate,
for the petitioner.

Mr. Rahul Sharma, Advocate,
for the respondent.

AUGUSTINE GEORGE MASIH, J (ORAL)

By this order, I propose to decide two revision petitions i.e. C.R. Nos. 2189 and 2201 of 2016, which have been preferred by the petitioner, who is the tenant in a shop, for which an eviction petition has been preferred by the respondent-landlord under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 for ejectment. Petitioner had moved an application under Order 6 Rule 17 of the Code of Civil

Procedure for amendment of the written statement by incorporating the plea

that the respondent-landlord has another commercial property in the form of a shop and in support of that assertion, reliance has been placed upon the electricity bill, which indicates a non-domestic connection and also the assessment register of the Municipal Corporation, Yamuna Nagar, Jagadhri, where again the nature of the building is mentioned as commercial and on the basis of these assertions, prayer for amendment of the written statement has been made. Apart from this application, another application has been moved for leading additional evidence in support of the assertion, as made in the proposed amendment in the written statement, which has also been dismissed in the light of the fact that the amendment of the written statement has not been accepted by the Rent Controller.

2. It is the contention of the learned senior counsel for the petitioner that the averment made by the petitioner (respondent herein) in the eviction petition is incorrect as apart from the shop in dispute, there is another commercial premises held by the respondent-landlord, which factum has not been disclosed by him in the petition, rather he has misled the Court by asserting that apart from the shop in question, there is no other shop owned by him or in his possession. He further contends that as the assessment register and also the electricity bill clearly indicates that there is another commercial premises in possession of the respondent-landlord in the form of a shop, the plea should have been permitted to be taken as it would go to the root of the cause and since the petitioner did not come to know of such a fact prior to the filing of the written statement, therefore, the application should have been allowed.

3. On the other hand, counsel for the respondent submits that the assessment register of the Municipal Corporation contains an error as the

same is of the year 2014-15, for which an application for correction has been moved with the competent authority i.e. the Municipal Corporation, which is pending consideration. He contends that as a matter of fact and on the basis of the sale deed, the premises is 192 Sq. Yard plot and that too, in a residential area and for residential purposes. He contends that no construction has been made on the said plot and it is a vacant plot as of now. Apart from that, he contends that the electricity bill, which has been produced by the petitioner, although indicates it to be a non-domestic connection but a perusal of the same would show that there is no consumption of electricity at the moment, which clearly indicates that there is no building existing on the plot in question. That apart, he contends that the intention on the part of the petitioner is to delay the proceedings especially in the light of the fact that in a Civil Revision No. 6148 of 2015 titled as Rajinder Singh vs. Pawan Kumar, wherein this Court, while disposing of the revision petition, had concluded in the following terms:

- “i) Petitioner-tenant shall be afforded one effective opportunity to lead and conclude his entire evidence, on the date that shall be fixed by the trial Court in this regard;
- ii) Petitioner-tenant shall be permitted to examine, with the assistance of the Court, only these witnesses; Jagdish Grover, Rakesh Kumar s/o Kharati Lal, Subhash Narula, Surinder Mohan Sharma, Tajinder Singh s/o S.Avtar Singh, Rakesh Jindal s/o Ramesh Jindal and Kaushalaya Devi w/o Om Parkash and no, other witnesses shall be examined.
- iii) In the event, petitioner fails to lead and conclude his evidence on the designated date, his evidence would be deemed

to have been closed and no further opportunity shall be granted.

However, if for any reason, the statement of any witness remains inconclusive or the Court has to adjourn the matter, the same shall be recorded on the following day. In any event, the matter shall not be adjourned beyond two dates;

iv) Trial Court shall decide the eviction petition as expeditiously as possible, but in any case, within a period of nine months from the receipt of certified copy of this order.”

4. The above would clearly indicates that the Court had afforded one effective opportunity to the tenant, who is the petitioner, to lead and conclude his entire evidence on the date that shall be fixed by the trial Court for the said purpose and further, the trial Court was directed to decide the eviction petition as expeditiously as possible and in any case, within a period of nine months from the date of receipt of certified copy of the order. He, on this basis, contends that the learned Rent Controller, Yamuna Nagar, vide his order dated 14.03.2016, has rightly dismissed the applications of the petitioner.

5. I have considered the submissions made by the learned counsel for the parties and with their assistance, have gone through the impugned order as also the records and I am in agreement with the order passed by the Rent Controller dated 14.03.2016.

6. It is not in dispute that the sale deed in favour of the petitioner is of 31.03.2010 and that too of a residential plot. Merely because a non-domestic connection has been issued would not mean that there is a shop running or constructed over the plot. Further, although the assessment register, which has been produced, may indicate it to be a commercial but

with the filing of the application for correction of the said assessment register, which is pending, it cannot be said that the shop is in existence on the plot in question.

7. The findings, as recorded, and the reasons, as assigned by the trial Court, are fully justified especially in the light of the fact that this Court in C.R. No. 6148 of 2015, which was preferred by the petitioner, has granted only one opportunity to the petitioner to conclude his evidence. As the sale deed is of the year 2010, there was no reason why the petitioner would not have been able to get the information in this regard. The petitioner appears to have waited till the fag end of the trial prior to the filing of an application for amendment of the written statement with an intention to delay the proceedings after there being a specific order passed by this Court to conclude the trial within a period of nine months. The application, as moved by the petitioner, for amendment of the written statement does not appear to be bona-fide and, therefore, the revision petition being devoid of merit does not call for interference by this Court.

8. In view of the above, the application for leading additional evidence which was filed on amendment of the written statement would also not survive and, therefore, both the revision petitions stand dismissed.

August 03, 2016

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: No