

115

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

C.R. No.3095 of 2016

Date of Decision : 02.05.2016

Parminder Singh

..... Petitioner

Versus

Tega Singh

..... Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Abhinav Gupta, 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?

AJAY TEWARI, J. (Oral)

This revision has been filed against the order of the Appellate Authority permitting the respondent-landlord to complete his cross-examination at the appellate stage.

The admitted facts are that the respondent-landlord had filed a petition for eviction of the petitioner-tenant and had tendered his evidence by way of an affidavit dated 19.02.2014 . He again appeared to give testimony on 24.09.2014 and he was partly cross-examined. Thereafter, he

again appeared on 07.02.2015. However, on that date he was asked to give written authority given to him by the legal heirs of Amrit Kaur and for that purpose his cross-examination was again deferred. Thereafter, the trial Court closed his evidence on 19.05.2015. Ultimately, the ejectment petition was dismissed solely on the ground that his cross-examination had not been concluded, therefore, his evidence was discarded. He filed an appeal and alongwith that appeal filed an application bringing out these facts to the Court and praying that his omission to appear on 19.05.2015 for cross-examination was completely unintentional and it was his bonafide impression that his cross-examination was concluded which prevented him to appear. After consideration of the entire facts, the Appellate Court found that his omission to appear for cross-examination on 3rd time had led to the dismissal of his case and by invoking his powers under Order 41 Rule 27 (1)(b) CPC allowed him to appear for cross-examination.

Learned counsel has argued that firstly there was no application moved by the landlord under Order 41 Rule 27 CPC since he very well knew that he would not be able to satisfy the parameters thereof. His second argument is based on a judgment of the Allahabad High Court in the matter of *Mohd. Sajid and others vs. Additional District Judge and another, reported as 2015 (3) ARC 239; Law Finder Doc Id #711398*.

Order 41 Rule 27 CPC is reproduced herein below for reference:-

“27. Production of additional evidence in Appellate Court.-

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—

(a) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Whenever additional evidence is allowed to be produced, by an Appellate Court, the court shall record the reason for its admission.”

In my opinion, the learned counsel is urging too pedantic a point of view. In the first place, it cannot be lost sight of that a Revisional Court would be loath to interfere with the discretion exercised by a Subordinate Court unless it is shown to be completely perverse or arbitrary. In the present revision, what emerges is that the respondent had appeared two times for cross-examination. Therefore, it was not a case where he was avoiding cross-examination. In the circumstances, the finding of the Appellate Court that it seems to be an honest error cannot be doubted. Had the petition being dismissed on any other ground also much may have been said but it is also not disputed that the petition was dismissed solely on the ground that the cross-examination of the respondent was not concluded and therefore his testimony could not be read into evidence. The plea that an application under Section 151 CPC was moved would also not prevent a court from exercising its power under Order 41 Rule 27 CPC in the interest of justice.

In the circumstances no fault can be found with the impugned order. In Mohd. Sajid's case (supra), the Court gave a specific finding which is as under:-

“6.....The contention in the writ petition is that no opportunity for cross examination of three witnesses has been provided by the Prescribed Authority is not based on any substantial evidence.”

Resultantly, this judgment can not be applied in favour of the petitioner. However, it cannot be gainsaid that because of this lapse of the respondent the petitioner has had to face two more rounds of litigation, one before the Rent Controller where the evidence is to be recorded and one before this Court.

Consequently, the petition is dismissed. However, it is directed that the respondent would be entitled to lead his evidence only on payment of Rs.20,000/- as costs to the petitioner.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

May 02, 2016

ashish

**(AJAY TEWARI)
JUDGE**