

CR No. 312 of 2014

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

CR No. 312 of 2014

Date of Decision: February 11, 2016

Mohd. Nazir

...Petitioner

Versus

Mohd. Ilyas

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. K.B. Raheja, Advocate
for the petitioner.

Mr. Jai Bhagwan, Advocate
for the respondent.

AUGUSTINE GEORGE MASI, J. (Oral):

Challenge in this revision petition is to the order dated 02.01.2014 passed by the Additional Civil Judge (Senior Division), Malerkotla, exercising the powers of Rent Controller, whereby, an application for submitting supplementary affidavit in support of the affidavit submitted in examination-in-chief has been allowed.

2. It has been asserted by the counsel for the petitioner that there is no provision under the Code of Civil Procedure (hereinafter referred to as 'the CPC) for tendering the supplementary affidavit when the affidavit in examination-in-chief has already been tendered. Counsel for the petitioner, in support of this contention, has relied upon the judgment of the Andhra Pradesh High Court in **Mohammed**

Abdul Ahmad Vs. Mohammed Abdul Gafoor @ Ahmed & another, 2013 (3) Civil Court Cases 244 (AP) and the judgment of this Court in **Chander Bhusan Anand Vs. Devinder Kumar Singla, 2010 (1) Rent Law Reporter 23.** He, thus, contends that the impugned order cannot be sustained and deserves to be set aside.

3. On the other hand, counsel for the respondent has submitted that the strict provisions of the CPC is not applicable to the proceedings under the Rent Act, in fact, the Rent Controller can adopt any procedure which will lead to the expeditious decision provided the procedure adopted is neither arbitrary nor unreasonable. In support of this contention, he has relied upon the judgment of this Court in **Vijay Kumar & others Vs. Durga Ashram Charitable Trust etc., 2002 (2) Rent Law Reporter 306.**

4. I have considered the submissions made by the counsel for the parties and with their assistance have gone through the impugned order.

5. It is not in dispute that the affidavit dated 20.09.2013 in examination-in-chief has been tendered and at that stage, an application alongwith an affidavit was submitted pointing out therein that the petitioner-landlord has sought eviction of the respondent-tenant on the ground of *bona fide* personal necessity of his son Mohd. Mushtaq as he was idle and after the filing of the affidavit in examination-in-chief, it has come to his knowledge that the son of the

petitioner-landlord is running a shop at Talian Bazar, Malerkotla in the name and style of Tamanna Bangles and General Store. On the basis of the said affidavit and keeping in view the interest of justice, the Rent Controller has proceeded to accept the supplementary affidavit as has been filed by the respondent-tenant as it goes to the root of the dispute. It is not in dispute that the cross-examination of the witnesses of the respondent has not yet started. Apart from the tendering of the affidavit in examination-in-chief of the respondent-tenant, another witness has tendered affidavit in support of his examination-in-chief but no cross-examination has started. Accordingly, the Court has rightly proceeded to permit the tender of supplementary affidavit as it is in the interest of justice which is paramount especially when it is required to do justice between the parties and no strict procedure of the CPC is applicable to proceedings under the Rent Act.

6. It is held by this Court in *Vijay Kumar's* case (supra) in paras 9 and 10 which read as follows:

9. I am of the considered opinion that these observations are of no assistance to the petitioners. Merely because the Appellate Authority has mentioned that Order 41 Rule 33 CPC authorises the Appellate Court to pass any decree and make any order which ought to have been passed, would not render the findings of the Appellate Authority either perverse or arbitrary. The Division Bench in *Raghu Nath Jalota's* case (supra) was considering

the powers under Section 15 of the Rent Act and the powers of the Appellate Court for remanding the case as contemplated under Order 41 Rules 23 and 25 of the CPC. After examining the entire history of the Rent legislation, the Division Bench observed as follows:-

"7. From the aforementioned history and the provisions of the present and the proceeding rent legislation, it appear to be self-evident that apart from the larger purpose of restricting rents and giving special protection to the tenants, the specific intent of the legislature was to provide a special and expeditious procedure for the disposal of the matters under the Act. The jurisdiction for the determination of these matters was designedly and meaningfully taken away from the ordinary run of Civil Courts and vested in the Controllers. They were left to devise their own procedure free from technicalities and formalities of the Civil P.C., which governed the Civil Courts. Sections 16 and 17 of the Act brought in the Civil P.C. only for the limited purpose of the summoning and enforcing the attendance of witnesses and the execution of the orders passed by the Controller or the Appellate Authority and by necessary implication exclude the strict application of its provisions to the authorities under the Act. The underlying purpose was to rid the authorities under the Act from the shackles of technical procedure and to provide a summary and expeditious mode of disposal, is further evident from the fact that originally only one appeal was provided

by the statute to the Appellate Authority and all further appeals or revisions were barred by Section 15 (4) of the Act. It was not till 1956 that by the Punjab Act No. XXIX, Sub-section (5) was added to Section 15 of the Act vesting the High Court with special revisional jurisdiction thereunder."

10. From the aforesaid observations, it becomes crystal clear that provisions of Order 41 Rule 23 and Rule 25 had been held to be inapplicable as it would amount to unnecessary delay in the finalisation of the proceedings before the Rent Controller and the Appellate Authority. A perusal of the underlined portions of the observations quoted above makes it abundantly clear that the specific intent of the Legislature was to provide a special and expeditious procedure for the disposal of the matters under the Act. The procedure applicable to Civil Courts was to be avoided, The Rent Controller and the Appellate Authority were left to devise their own procedure free from technicalities and formalities of the CPC which govern the Civil Courts. The Division Bench has again stressed that the underlying principle was to rid the authorities under the Act from the shackles of technicality and procedure and to provide a summary and expeditious mode of disposal. If that be the avowed purpose for enacting the Rent Act, the Rent Controller and the Appellate Authority are free to adopt any procedure which will lead to an expeditious decision provided the procedure adopted is neither arbitrary nor unreasonable. This view of mine also finds support from the

observations of the Division Bench in paragraphs 9 and 10 of the aforesaid judgment. The Division Bench observed as follows:

"9. In the aforesaid back ground, Mr. J.L. Gupta, learned counsel for the petitioner appears to be on firm ground in contending that the legislature had a clear-cut and purposeful rationale in excluding the power of remand and a decision afresh under Section 15 (3) of the Act. It was pointed out that one of the major premises of the statute was to take away the rent jurisdiction from the ordinary gamut of civil litigation and to put it in a more expeditious and a quicker procedural remedy laid out under the Act and emancipate it from the limitations and technicalities of Civil Procedure. It was in line with the intent that the legislature again expressly chose the relatively speedier mode of disposal of appeals by providing that there could only be either an enquiry through the Controller or itself by the Appellate Authority in order to prevent the whole matter from being put back into the boiling pot of litigation by a remand of the whole case and its trial and decision afresh. It was highlighted that by its very nature the issues of eviction and others arising under the rent jurisdiction are urgent in nature calling for an expeditious final decision. The very purpose of the statute may indeed be frustrated if this jurisdiction is again bogged down into the quagmire of the ordinary civil process. It was, therefore, submitted with considerable plausibility that reading of the power of remand and decision

afresh in Section 15 (3) with the consequential result of a retrial and an appeal and revision therefrom would virtually reduce the expeditious procedure sought to be devised by the Act to the tardy process of the ordinary civil suit from which it was sought to be liberated by special legislation.

10. The above vide is patently buttressed by the recent 77th Report of the Law Commission of India, wherein Chap. 10, it has been stated as follows:-

"10.1. There are certain cases which, by their very nature, have an element of urgency about them and call for speedy disposal. Quite a number of these cases are under special Act....

10.2. A second category of cases which call for early disposal are eviction cases, especially those on the ground of bona fide personal necessity of the landlord. Such cases obviously call for an early disposal."

7. In view of the above, the submission of the learned counsel for the petitioner cannot be accepted. The judgments relied upon by the petitioner i.e. *Mohammed Abdul Ahmad's* case (supra) would not be applicable to the case in hand as it was under the provisions of the CPC and admittedly, there is no provision of filing the supplementary affidavit in support of the affidavit tendered in examination-in-chief.

8. As regards the judgment of this Court in *Chander Bhusan Anand's* case (supra), again it was a case where the Court has specifically said that the general principles of CPC apply to the

proceedings before the Rent Controller to advance cause of justice, as such CPC is not applicable to the proceedings before the Rent Controller under the East Punjab Urban Rent Restriction Act, 1949. The said judgment, therefore, would not be of any help as far as the case of the petitioner is concerned.

9. In view of the above, finding no merit in the present revision petition, the same stands dismissed.

February 11, 2016

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**