

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

115

Civil Revision No.5196 of 2016
Date of Decision: August 19, 2016

Vikram Sharma

...Petitioner

Versus

Sushil Jain

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Gaurav Seth, Advocate
for the petitioner.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this revision petition is to the order dated 02.07.2016 passed by the Rent Controller, Ambala, whereby the application for additional evidence preferred by the petitioner has been dismissed.

2. It is the contention of learned counsel for the petitioner that petitioner had moved an application for leading additional evidence and that too for placing on record certified copy of the sale deed dated 27.11.2015, whereby the respondent-landlord has sold his shop to one Smt. Kusum Lata and the other document is the handing over of the vacant possession by another tenant of a shop qua whom the ejectment order dated 03.03.2016 has been passed which is also owned by the respondent. He contends that these documents were not to the knowledge of the petitioner when the order dated 09.12.2015 was passed by this Court in a revision petition granting the petitioner one last opportunity to examine his witness subject to costs. He, however, fairly admits that despite opportunity given by the Rent Controller to the petitioner in compliance with the order passed by this Court, no further evidence was led by the petitioner and the evidence was

closed by the Rent Controller by order. He submits that the delay itself should not be a ground for not permitting the leading of an additional evidence, especially when the petitioner was not in knowledge of the fact that a sale deed has taken place of the shop and one of the adjacent shops has been evicted and possession handed over on 03.03.2016. Counsel, thus, contends that the order impugned in the present revision petition dated 02.07.2016, does not sustain and deserves to be set aside.

3. Reliance has been placed upon the judgments of this Court in *Jeeto @ Smt. Manjit Kaur Versus Union of India 2007(4) RCR (Civil) 408* and *Ram Niwas Versus Kalu Ram and another 2012(4) RCR (Civil) 56*.

4. I have considered the submissions made by learned counsel for the petitioner and with his able assistance, have gone through the impugned order.

5. As per the admitted facts, the evidence of the petitioner was closed by the Rent Controller by order dated 10.09.2015 after granting him 17 opportunities for leading his evidence. Against the said order, Civil Revision No.8374 of 2015 was preferred by the petitioner which was allowed on 09.12.2015 subject to payment of ₹20,000/- as costs, whereby only one effective opportunity to lead and conclude his evidence on the date that shall be fixed by the trial Court, was ordered. Perusal of the impugned order would show that after the passing of the order in the revision petition, the petitioner still sought various adjournments and ultimately the petitioner stated that he did not want to examine the witness leading to closing of his evidence. Instead of proceeding and availing the opportunity given by this Court by its order dated 09.12.2015 in the Civil Revision preferred by the

petitioner, he proceeded to file the present application for additional evidence on 02.04.2016. This clearly shows that the primary intent of the petitioner is to delay the proceedings against the respondent-landlord from getting the shop evicted. The document on which reliance has been placed and is being sought to be produced in additional evidence is a sale deed dated 27.11.2015 which obviously is much before the passing of the order dated 09.12.2015 by this Court in Civil Revision No.8374 of 2015. The said document could have been produced by the petitioner when an opportunity was granted to the petitioner by the High Court and, therefore, the due diligence on the part of the petitioner is absolutely missing rather it would not be wrong to state here that the petitioner had been sleeping over the available pleas to him nor did he lead any evidence in this regard when opportunity was so granted.

6. As regards handing over of the vacant possession of a tenant-Smt. Kamini Verma adjacent to the demised shop in possession of the petitioner on 03.03.2016 is concerned, suffice it to say that the order of eviction qua the said shop was passed by the Rent Controller, Ambala, on 26.07.2015 which is very difficult to believe, was not to the knowledge of the petitioner and further that eviction order has also not been produced in evidence by the petitioner which was given to the petitioner by this Court. The assertion, therefore, that he came to know about the eviction only on 03.03.2016 when the possession was taken over by the respondent-landlord, cannot be accepted.

7. Both the documents which are being sought to be produced as additional evidence cannot be permitted as far as the present stage of the

case is concerned when the case is fixed for rebuttal evidence and the Rent Controller has rightly observed that it would be travesty of justice if the application at this belated stage is allowed, especially in the light of the fact and the observations made by this Court above as the requirement of the statute is not fulfilled as the petitioner has failed to show that despite due diligence, he could not bring in evidence the said documents.

8. The judgments on which reliance has been placed by learned counsel for the petitioner i.e. *Jeeto @ Smt. Manjit Kaur (supra)* and *Ram Niwas's case (supra)*, the principles as laid down by this Court cannot be disputed but keeping in view the peculiar facts and circumstances of the present case and the intent with which the application has been moved, the same cannot be permitted and the Court cannot be a mute spectator to the law having been given a toss by a litigant, especially when it has come to the conclusion that the application for leading additional evidence is not a *bona fide* act on the part of the petitioner rather with a *mala fide* intent to delay the proceedings.

9. In view of the above, finding no merit in the present revision petition, the same stands dismissed by upholding the order dated 02.07.2016 passed by the Rent Controller, Ambala.

August 19, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No