

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

120

CR No.1000 of 2017

Date of decision: 13.02.2017

Jagdish Rai

....Petitioner

Versus

Gulbir Singh (deceased) th. LRs

...Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.Amit Jain, Advocate, for the petitioner.

G.S. SANDHAWALIA, J. (Oral)

The present revision petition, filed by the petitioner-tenant is directed against the order passed by the Appellate Authority, Ludhiana dated 20.01.2017 (Annexure P4) whereby report has been called from the Rent Controller, while allowing the application filed under Order 41 Rule 27 CPC, of the landlord.

Counsel for the petitioner has submitted that by virtue of the said order, the deceased landlord and his legal representatives cannot be permitted to fill up the lacuna which has surfaced and of the facts which they were in knowledge of.

A perusal of the paperbook would go on to show that the rent petition was filed by Gulbir Singh (now deceased) for ejectment from the premises in question on the ground that his sons, namely, Simranpreet Singh and Anmolpreet Singh, who have qualification of +2, have, now, become major and want to set up their business in the shop in question. The factum of the landlord not having a son, as such, was never objected to by the petitioner-tenant, as such. However, it is apparent that in cross-examination, while the wife-Ravinder Kaur was appearing, it has come across that Simranpreet Singh was son of Jit Singh and thus, a dispute arose regarding the parentage. It is

also not disputed that during the pendency of the eviction petition, Simranpreet Singh had been brought on record as the legal representative. But inspite of the said fact, the Rent Controller had dismissed the eviction petition on 29.07.2016 (Annexure P1) on the ground that it was not proved that Simranpreet Singh was the son of the landlord.

Resultantly, an appeal was filed before the Appellate Authority and the application under Order 41 Rule 27 CPC was filed, to lead additional evidence and to produce the school records/parentage proof of Simranpreet Singh, submitting that no issue had been framed regarding the said fact and resultantly, it would have great affect on the merits of the appeal and production of the record would help the Court to adjudicate and decide the issue. The application was objected to by filing reply and taking the plea that the said school records were neither relevant nor important to decide the lis and therefore, the landlord cannot be allowed to fill up the lacuna and patch up the weak points.

Resultantly, it has led to the impugned order being passed by the Appellate Authority whereby it came to the conclusion that this piece of evidence goes to the root of the case and for the purpose of advancing justice, the same will be required to be led. It further went on to hold that keeping in view the principle of law that the appellate Court has the power to allow additional evidence not only if it requires such evidence to enable it to pronounce judgment but also for any other substantial cause. Resultantly, the report was called for from the Rent Controller to prove the school records and two opportunities were to be granted to the petitioner also to rebut the same and the report was, thus, to be submitted to the Appellate Authority.

The said order is in consonance with the law laid down by the Division Bench of this Court in **Raghu Nath Jalota Vs. Romesh Duggal & another 1980 AIR (Punjab) 188** whereby it has been held that the Appellate Authority has no power of remand and only report is to be called for. As noticed, there was never any issue regarding the parentage of Simranpreet Singh. It was only during the cross-examination of the wife of the landlord, the said issue arose, which led to the dismissal of the eviction petition. For deciding the matter, the Appellate Authority has rightly come to the conclusion that the controversy can only be resolved if the evidence is brought on record, the fact regarding the parentage of the child, since the *bona fide* of the landlord itself is doubted with regard to the fact that whether Simranpreet Singh is the son of landlord-Gulbir Singh. The basic purpose of allowing the application was to enable the Court to go to the root of the matter and adjudicate upon the merits of the case and decide the lis finally between the parties.

Accordingly, this Court is of the opinion that the Appellate Authority was well justified in calling for the report, as it would only help decide the matter between the parties. Therefore, the said order does not suffer from any infirmity and irregularity which would warrant interference under revisional jurisdiction of this Court. Resultantly, the present revision petition is dismissed in limine.

February 13th, 2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No