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

Civil Revision No.1366 of 2017(O&M)

Date of decision: 15.5.2017

Pawan Kumar

...Petitioner

Versus

Vikrant Malhotra

...Respondent

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

Present: Mr. Vaibhav Sehgal, Advocate for the petitioner.

Mr. Gagandeep Singh Chhina, Advocate for the respondent.

G.S.SANDHAWALIA, J. (Oral)

The petitioner-tenant challenges the order dated 8.12.2016 (Annexure P/1) whereby his evidence was closed by order and only permission was granted to cross examine the witnesses. Thereafter, application filed for recalling of the said order and allowing the petitioner-tenant to lead remaining evidence was also dismissed on 15.2.2017 (Annexure P/2).

On 23.2.2017 while issuing notice of motion, following contention was noticed:-

“Inter alia submits that the ejectment application was filed in the year 2011 on the ground of non-payment of rent from 01.03.2006, cease to occupy, leading to material impairment and *bonafide* requirement. It is submitted that issues were framed on 02.03.2015 and the evidence of the respondent-landlord was closed on 07.10.2016. Thereafter, the case was adjourned to 24.10.2016, 09.11.2016 and 23.11.2016

and last opportunity was granted on 30.11.2016, when Mansoor Alam was examined as RW. On 08.12.2016, Meenakshi, wife of the petitioner, tendered her evidence and the case was fixed for 12.01.2017, for her cross-examination and the evidence of the petitioner was closed. The application for recall of the order was dismissed vide order dated 15.02.2017 (Annexure P2). It is, accordingly, submitted that the landlord took over 1 ½ years to lead his evidence whereas the evidence of the tenant had been closed within a period of 1 ½ months. It is submitted that it would be travesty of justice, as such, and equal opportunity should have been granted, especially in view of the fact that witnesses have to be examined to demonstrate that the premises are not lying closed.

Notice of motion for 21.04.2017.

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In the meantime, operation of the orders dated 08.12.2016 and 15.02.2017 shall remain stayed. It is made clear that if service is not effected upon the respondents, the stay order shall be liable to be modified.”

Counsel for the respondent has pointed out that the case is now fixed for 22.5.2017 for further proceedings.

Counsel for the petitioner submits that he has to examine himself and one witness, namely, Mr. Gurvinder Singh whom he had summoned vide application dated 15.10.2016 (Annexure P/4) along with one Mansoor Alam, who has already been examined. It is accordingly submitted that process fee had already been deposited on 15.10.2016 for summoning the said witness.

Keeping in view the above facts, this Court is of the opinion

that the orders dated 8.12.2016 and 15.2.2017 (Annexures P/1 and P/2 respectively) passed by the Rent Controller, Ludhiana were not justified in the facts and circumstances of the case. The tenant would be gravely prejudiced if he is not allowed to examine himself and the said witness as eviction is sought on the grounds of ceasing to occupy the premises in question and material impairment apart from other grounds. It is settled principle that rules of procedure are handmaids of justice and adequate opportunities should have been given before passing the drastic order of closing of evidence. Before 8.12.2016 no costs were imposed to put the tenant on guard so the he would have been aware that his evidence was likely to be closed.

Accordingly, the revision petition is allowed. The orders dated 8.12.2016 and 15.2.2017 (Annexures P/1 and P/2 respectively) passed by the Rent Controller, Ludhiana are set aside subject to payment of costs of ₹ 5000/- to be paid to the respondent-landlord. Three effective opportunities shall be given by the Rent Controller, Ludhiana to the petitioner-tenant so that he is able to complete his evidence.

May 15, 2017
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(G.S.SANDHAWALIA)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No