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

Civil Revision No.2001 of 2015

Date of decision: 2.5.2017

Jatinder Pal Singh

...Petitioner

Versus

M/s Sona Project Pvt. Ltd. (Regd.)

...Respondent

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

Present: Mr. G.S.Jagpal, Advocate for the petitioner.

Mr. Hemender Goswami, Advocate for the respondent.

G.S.SANDHAWALIA, J. (Oral)

The petitioner-tenant challenges the order dated 9.9.2014 (Annexure P/1) whereby cross-examination of PW-1 Inderjit Singh was treated as Nil on account of failure of counsel for the respondent to cross-examine the said PW. An application thereafter for review of the said order has been dismissed vide order dated 31.1.2015 on the ground that powers under Section 151 CPC are not to be exercised at the mere asking of the party.

The plea taken by the petitioner is that more than 10 opportunities have been given to the landlord also to conclude his evidence and sufficient opportunities have not been given to cross examine the said witness.

A perusal of zimini orders would go on to show that the evidence of the said witness, who was the Managing Director of the respondent company by way of affidavit was tendered on 8.1.2014 and the

case was fixed for 21.1.2014 for cross-examination. The said witness was not present on 21.1.2014 and on the next date, the Presiding Officer was on leave. On 12.3.2014, the Rent Controller noticed that the witness was again not present and more than nine opportunities had already been given. The case was adjourned to 22.4.2014 while granting last and final opportunity to conclude entire evidence. On said date, the said witness was present but a date was taken to conclude entire evidence on the next date failing which evidence of the landlord would be closed and the matter was adjourned to 8.5.2014. It is thus apparent that on the said date fault is not on account of the petitioner or his counsel.

The petitioner's counsel thereafter took a date on 8.5.2014 through proxy counsel and witness was bound down for 10.7.2014 after vacation on which date the witness was not present. Similar was the position on 26.8.2014. It is thus apparent that even the witness was not appearing regularly and on 9.9.2014 without imposing any costs, cross examination was ordered to be treated as nil and evidence was closed.

The methodology which was adopted by the trial Court cannot be appreciated in any manner. It is settled principle that rules of procedures are handmaids of justice. The Rent Controller should have put the petitioner on caveat by imposing costs, before taking such a drastic step. There has been lapse on the part of the tenant also and for the said act, the other side could be duly compensated by way of payment of costs and the matter should be decided on merits and not on the ground of technicalities.

Accordingly, keeping in view the above discussion, the present revision petition is allowed and the orders dated 9.09.2014 (Annexure P/1)

and 31.1.2015 (Annexure P/4) are set aside. The petitioner-tenant shall be entitled to cross-examine the said witness subject to payment of ₹ 4,000/- as costs, to the landlord. The Rent Controller, Ludhiana shall fix a specific date and give effective opportunity to the counsel for the petitioner to cross-examine the said witness.

May 02, 2017
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(G.S.SANDHAWALIA)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No