

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CR No.1799 of 2017 (O&M)****Date of decision: 10.08.2017**

Paramjit Singh & another

...Petitioners

Vs.

Sat Pal & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINAPresent: Mr. Rajan Bansal, Advocate,
for the petitioners.**RAJIV NARAIN RAINA, J. (ORAL)**

I find nothing inherently or fundamentally wrong in the impugned order passed by the Rent Controller in an application filed by the petitioning tenants to de-exhibit the documents Exs.A4 to A8 and Exs.A14 to A18. The admissibility of documents and what evidentiary weight is to be attached to them is a matter of law of evidence and can be determined at the stage of final hearing. Still further, when the disputed documents were produced on record and marked as exhibits, the same were not objected to by the petitioners. There is a difference between admissibility and proof of documents. Proof is a matter of court evaluation on the probative value and relevancy of fact for which the petitioners will have ample opportunity before the Rent Controller at the time of final hearing in the fashion they like in support of their case.

It is trite that no law permits de-exhibiting an exhibit, which already forms part of the judicial record. It is, however, open to Court to permit another document to come on record by producing party on the ground that first document was wrongly exhibited. [See Division Bench judgment of the Bombay High Court in Subhash Babu Patil Vs. State of Maharashtra & another, reported as 2008 (4) RCR (Civil) 819]. If he succeeds, the Court will look for other evidence in proof of facts-in-issue. In that ruling the Court held that at the time of exhibition of a document neither party can vouch on the true character of the document and its evidentiary worth unless person producing and tendering document, which he wishes to de-exhibit cross-examines witnesses of the other side. Much would depend on the admissibility by mode of proof and relevance of the document to the case, which the Court will consider at the time when it delivers judgment. Also a document can always be impeached in cross-examination. It will be for the Court to rely or discard such documentary evidence if it has no bearing on the case. In the face of primary evidence, secondary evidence to the contrary would be worthless and such a document can be de-exhibited, when the Court applies its mind at the time of final hearing keeping all the evidence collected in mind when it will decide upon the relevance and admissibility of each of the oral and documentary evidences in relation to the issues on which adjudication is based. Besides, the zimni orders on the file of the Rent Controller are not placed on record despite the orders of this Court and opportunity given to know whether the petitioners raised a finger at the time when the documents were exhibited.

The reliance of Mr. Bansal on the Single Bench judgment of this Court in Jasjit Singh & another Vs. Prem Harjit Singh & another, 2013

(1) RCR (Civil) 514 is misconceived. This decision is relevant where objection is taken by the other party with regard to admissibility of document tendered in evidence, then the Rent Controller is obliged to first decide the question of admissibility of the document/s before making endorsement thereon. It was in this background, the Court held that decision on objection has to be taken at the time when the same is raised and cannot be postponed till the entire evidence in the case is over and the case is finally heard for decision. The Single Judge relied on a decision of Andhra Pradesh High Court in T. Arthi Vs. K. Anand Reddy & others, 2006 (4) CCC 05 (AP), wherein it is laid down that the ad hoc and provisional identification mark, if any, given to a document, when it was presented along with an affidavit, in lieu of chief-examination, cannot be treated as a step taken by the Court, receiving it in evidence.

The Rent Controller, Bathinda has considered the application moved by the tenant for de-exhibiting the documents i.e. Exs.A2 to A10; Exs.A14 to A16 & Exs.A20 to A22, produced by the landlords in the examination-in-chief in its correct perspective by recording the following findings:

“I have heard ld. counsel for parties and have gone through the file. Ld. counsel for respondents/tenant has filed an application to de-exhibit document filed by applicant/landlord that is exhibit A2 to A10 and Ex.A14 to A16 and Ex.A20 to A22. Perusal of the record shows that chief examination of AW1 Munish Kumar was conducted on 23/1/2015 and all documents i.e. A1 to A10 were exhibited at that time, no objection was made by counsel for respondent rather, they simple requested for deferring the cross-examination of AW1. Further exhibit A2 and A3 is the photocopy of sale deed vide which the landlords have become

the owner of the property and this fact is also not denied by the respondents/tenant in their reply to the main application rather, they have admitted the existence, execution and contents of the said sale deeds. Exhibit A9 site plan was prepared by DW1 Munish Kumar as the signatures of Munish Kumar are appended on that and Exhibit A10, the sanctioned municipal plan which is also correctly marked as exhibit A10. Moreover, in case titled Raja Ram Ganapati versus Madhukar Yadau, 1081 (2) RLR 105, it was held that sanctioned municipal building plan is a public document. Further regarding documents exhibit A20 to 22 has been specifically written in chief examination of AW5 Sanjiv Goyal that he has brought original sale deed and certified copies are exhibited as A20 to 22. Further sale deed is a public document certified copy is per se admissible as held in case titled Hemlata Devi and others versus Ramataur Sao and others, 2016 AIR CC 686 (JHAR), Santosh Kumar versus Poornima Kumari and others, AIR 2011 (JHAR) 76. Now coming to documents exhibit A4 to A8 and exhibit A14 to 16. Merely because a document has been exhibited in the court does not necessarily means that the same has been proved. The admissibility of the documents is a matter of argument, which can be determined at the stage of final arguments in the present case and his objection is kept open and be determined during the final arguments of the present case.”

A perusal of the above findings reveal that the Rent Controller has not expressed any final opinion on the documents and has kept the objection open to be determined at the time of final arguments. The admissibility of Exs.A4 to A8 and A14 to A16 has also been kept open on admissibility to be considered to the stage of final arguments.

At this stage, whether the documents are marked or exhibited is of no consequence unless it is aimed by way of an application as presented at interlocutory stage only to prolong the proceedings by the tenants to their

advantage resulting from delay, which situation the Rent Controller has well taken care of so that the progress of trial to its speedy conclusion is not impended. No prejudice has been caused at this stage to the petitioners by the impugned order, which keeps the application pending.

As a result of the above discussion, I find no merit whatsoever in this petition for issuing any orders for de-exhibiting the documents in view of the nature of the orders passed by the Rent Controller which sufficiently protect the tenants against 'case decided' determining rights and liabilities at an interim stage of the proceedings, which is not the case, and would accordingly dismiss the petition in limine.

10.08.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>Yes</i>