

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

**Civil Revision No.2273 of 2013 (O&M)
Decided on : 08.02.2017**

Parminder Singh

... Petitioner

Versus

Maman Chand and others

... Respondents

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

Present : Mr. Ramesh Kumar Bamal, Advocate
for the petitioner.

Mr. Aman Bahri, Advocate
for the respondents.

G.S. Sandhawalia, J. (Oral)

The present revision petition under Section 15 (5) of the East Punjab Rent Restriction Act, 1949 is directed against the order dated 04.04.2012, whereby the ejectment has been ordered from the tenanted premises by the Rent Controller, Chandigarh, on the ground of bonafide necessity. Challenge has also been raised to the order dated 06.02.2013 passed by the Appellate Authority, Chandigarh dismissing the appeal of the petitioner-tenant.

A perusal of the record would go on to show that before the Rent Controller initially the tenant was represented and his defence was struck off on 01.12.2008 eventually leading to the passing of the eviction order. The eviction was sought on the ground that the respondents were landlord on basis of a sale deed dated 02.05.1989. When the appeal was filed on 28.05.2012, it was accompanied alongwith an application for additional evidence, which would be clear from the record and notice was issued in the appeal on 28.05.2012.

A perusal of the order dated 29.11.2012 would go on to show that the case was kept for arguments on the application for additional evidence and the main appeal, which was to be heard on 23.12.2012. Further observations had been made that in view of the order of this Court, the appeal was to be decided expeditiously by 06.02.2013. As noticed the appeal has been dismissed on the said date.

It is pertinent to notice that in interim period also vide order dated 08.08.2012, the mesne profits had been fixed @ ₹8,000/- per month by the Appellate Authority. It was challenged by the respondent-landlord in ***Civil Revision No.5949 of 2012***, which was dismissed as withdrawn. However, directions had been issued by this Court to decide the appeal expeditiously preferably within four months from the date of the order.

It is not disputed that no reply was filed to the application for additional evidence, since it had been tagged alongwith the main appeal. In the application for additional evidence, the petitioner has taken the plea that the land measuring 4 Biswas has been purchased by him as per sale deed dated 11.02.1994 and he was never tenant over the land of the landlord or the previous owner at any point of time. This aspect thus was never taken into consideration by the Appellate Authority, which is a final Court of fact.

In the grounds of appeal also serious allegations have been levelled against the counsel who had appeared before the Rent Controller and who has alleged to have tendered the rent on behalf of the petitioner, even without assessment of the rent, apart from other allegations

regarding fabrication of the blank signed papers of the petitioner. It was further averred that the petitioner was proceeding separately against the said counsel. It is a matter of record that no written statement was also filed before the Rent Controller and the defence had been struck off on 01.12.2008

It is not disputed that such a complaint was filed before the Disciplinary Committee of the Bar Council of Punjab & Haryana against the said counsel. Mr. Bahri submits that the complaint has since been compromised and placed reliance upon Annexure R-1 to R-3 attached alongwith CM-5596-CII-2016.

In view of the above protracted litigation *inter se* the parties, this Court is of the opinion that the non-decision of the application for additional evidence has led to mis-carriage of justice. It was incumbent upon the Appellate Authority to consider the same on merits, so that the matter could be thrashed out and decided by going to the root of the controversy as to whether the present petitioners are liable to be evicted or not, keeping in view the fact that the relationship of landlord and tenant has itself been disputed.

In '***State of Rajasthan Vs. T. Sahani***' (2001) 10 SCC 619 the Apex Court held that the application for additional evidence should be decided at the time of hearing of the appeal.

The Apex Court in '***Malyalam Palntatins Ltd. Vs. State of Kerala***' 2011 AIR (SC) 559 has held as under:-

“11. If any petition is filed under Order 41 Rule 27 in an appeal,

it is incumbent on the part of the appellate Court to consider at the time of hearing the appeal on merits so as to find out whether the documents or evidence sought to be adduced have any relevance/bearing in the issues involved. It is trite to observe that under Order 41, Rule 27, additional evidence could be adduced in one of the three situations, namely, (a) whether the trial Court has illegally refused the evidence although it ought to have been permitted; (b) whether the evidence sought to be adduced by the party was not available to it despite the exercise of due diligence; (c) whether additional evidence was necessary in order to enable the Appellate Court to pronounce the judgment or any other substantial cause of similar nature. It is equally well-settled that additional evidence cannot be permitted to be adduced so as to fill in the lacunae or to patch up the weak points in the case.

12. Adducing additional evidence is in the interest of justice. Evidence relating to subsequent happening or events which are relevant for disposal of the appeal, however, it is not open to any party, at the stage of appeal, to make fresh allegations and call upon the other side to admit or deny the same. Any such attempt is contrary to the requirements of Order 41 Rule 27 of CPC. Additional evidence cannot be permitted at the Appellate stage in order to enable other party to remove certain lacunae present in that case.

Resultantly, the present revision petition is allowed. The order dated 06.02.2013 of the Appellate Authority is set aside. The Appellate Authority shall decide the matter afresh alongwith the application for additional evidence. The respondent will be given opportunity to file reply to the application for additional evidence.

FEBRUARY 08, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No