

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.2746 of 2017

Date of Decision: 04.08.2017

Deepak Kumar

... Petitioner

Versus

Vipan Kumar and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Aayush Gupta, Advocate,
for the petitioner.

Mr. Namit Gautam, Advocate,
for the respondents.

RAJIV NARAIN RAINA, J. (Oral)

1. When this matter came up for motion hearing on April 20, 2017 the Coordinate Bench noticed the core issue and passed the following order:-

“Counsel inter alia submits that the right of cross examination has been declined to the petitioner-tenant wrongly on 08.12.2016 (Annexure P-3) and thereafter, the application has also been dismissed for recall of witnesses on 20.03.2017 (Annexure P-6). It is pointed out that the affidavit was only tendered by two witnesses on 25.10.2016. On 10.11.2016, only one witness was present and costs of ₹500/- were imposed on account of the request made. On the next date, the drastic order has been passed in spite of the costs having been deposited. It is submitted that the counsel was not available on 08.12.2016 as he had gone to Delhi to fly out of the country. It is submitted that the party cannot be prejudiced on that account and the other side had been duly compensated also.

Notice of motion for 16.05.2017.

Dasti.

In the meantime, passing of final order shall remain stayed.

In case service is not effected, stay will be liable to be vacated.”

2. During the recording of the statement of witnesses of the petitioner absence of counsel on one date had led to passing an order recording 'Nil' denying opportunity of cross-examination to the tenant. That order is dated December 08, 2016 passed by the learned Rent Controller and the same is reproduced below:-

“Present: Sh. Surinder Dogra, counsel for the petitioner

Sh. Guralp Singh Gill, counsel for respondent

Today the case was fixed for cross examination of PW-1 and PW-2. Both the witnesses have come present but Ld. counsel of respondent moved an application for adjournment. Perusal of file shows that on last date of hearing last opportunity was given to the respondent for cross examination of PW-1 and PW-2 subject to depositing of cost Rs.500/-. Today the respondent has deposited the cost but he is seeking adjournment for cross-examination. As today was the last opportunity given to the respondent for cross-examination, this court does not find any justification for providing an adjournment. Accordingly cross-examination of PW-1 and PW-2 is hereby recorded as NIL. Now to come up for remaining plaintiff evidence on 16.01.2017.”

3. There is no doubt that before the order was passed last opportunity was given to the petitioner tenant by the learned Rent Controller for availing right to cross-examination of PW-1 & PW-2 subject to deposit of costs of ₹500/- which costs were paid but at the same time the written request for further adjournment was declined. The reason in the application for inability to cross-examine the witnesses of the landlord was that counsel was due to proceed abroad on an international flight and

evidence of the same was adverted to in the application including mentioning air ticket, passport and other travel documents.

4. The petitioner, the respondent before the court of the Rent Controller moved an application for recall of the order but it has been dismissed vide the impugned order dated March 20, 2017 (P-6). The petitioner prays that the order deserves to be set aside and right to cross-examine restored and a date fixed for the purpose.

5. The ground for rejection of the recall application is based on conduct of the petitioner on which conduct the learned Rent Controller has observed that it has caused unnecessary harassment to the witnesses who have been coming to Court for their cross-examination only to be turned away due to adjournments and lastly in the absence of counsel who was travelling abroad.

6. This may be true as far as harassment is concerned suffered by the witnesses and delaying the proceedings but still I believe the petitioner can be compensated for hardship caused by payment of costs. The right of cross-examination of the material evidence on which the fate of the eviction petition depends is a very valuable right which this Court will not want to obstruct and therefore, the trial Court should have carefully weighed the consequences evaluating them in the totality of circumstances and the demands of justice, in order to balance out the competing interest of the parties in eviction proceedings which is usually more acrimonious than other many other species of litigation. While examining the orders of the kind passed, the demands on this Court increase manifold in order to do substantial justice and in this process sometimes interference becomes

necessary to avoid a miscarriage of justice.

7. To restore the path of justice by allowing the petitioners to cross-examine PW-1 and PW-2 on one, if not two consecutive dates, to be fixed by the Rent Controller according to the convenience of that Court is commended. The petitioner should not be punished for the absence of his counsel as it was not at fault. The explanation for absence of counsel on the eventful day could have earned accommodation by one date at enhanced costs. Costs may not be the panacea of all manner of grief or evils in the world of litigation but they are a handy tool to serve the ends of justice. Non-appearance of counsel for the tenant on the date when the impugned order was passed for the first time was not his personal fault but the non-availability of the counsel and that should not prejudice a party.

8. As a result of the foregoing discussion, I would allow this petition and set aside the order dated March 20, 2017 not for the reason it could not have been passed, but is, the better option to adopt in the circumstances. The restoration of opportunity foreclosed will invite costs which are assessed at ₹20,000/- to be paid by the tenant to the landlord before the Rent Controller on the date of appearance or any other date fixed in the discretion of the Court.

9. Parties to appear before the Rent Controller, Ludhiana on 16.08.2017.

10. On appearance, the learned Rent Controller would fix a date for appearance of PW-1 and PW-2 to face cross-examination. If the tenant-petitioner fails to cross-examine the two witnesses on the date fixed by the Rent Controller then the impugned orders would stand restored.

11. After the cross-examination has been recorded the learned Rent Controller would give no more than 2/3 dates to the petitioner tenant to produce his entire evidence and it make an endeavour to conclude the trial by the end of this year or as soon as practicable but not later than the financial year ending 31.3.2018.

04.08.2017
manju

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned *Yes*

Whether reportable *No*