

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

C.R. No. 2773 of 2017
Date of decision: 28.04.2017

Vipan Kumar

....Petitioner(s)

Versus

Subhash Chander

...Respondent(s)

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

Present: Mr. Deepankur Sharma, Advocate,
for the petitioner.

Mr. Ramnish Puri, Advocate,
for the caveator/respondent.

G.S.SANDHAWALIA, J. (Oral)

Challenge in the present revision petition is to the order dated 15.03.2017 (Annexure P-5) whereby, the application for leading additional evidence has been dismissed by the Civil Judge (Junior Division), Amritsar. The additional evidence which was sought to be produced is in the form of Handwriting Expert to prove that the signatures on the summons of the Process Server are not of the applicant. The proceedings are under Order IX Rule 13 CPC for setting aside the ex parte eviction order dated 15.11.2012 (Annexure P-2) and were initiated on 10.02.2014 (Annexure P-3).

A perusal of the application would go on to show that the case of the present petitioner was that he had never been personally served with the notice which had been issued by the Court and the reports on the summons were false. The same had been procured by the landlord in connivance with the Process Server and no Process Server had ever

approached him and, therefore, ex parte proceedings ordered on 15.11.2012 were stated to be bad.

The respondent landlord examined the Process Server, who deposed that he had obtained the signatures of the present petitioner on the summons. Resultantly, the present application for additional evidence has been filed.

The application for additional evidence cannot be permitted to fill up the lacuna in the case. The petitioner was well aware that there was a report of service as such against him. As noticed from the averments made in the application under Order IX Rule 13 CPC, the onus of this aspect was, thus, upon him and it was for him at the initial stage to examine the Handwriting Expert to rebut the presumption of service. The evidence had been closed by him on 26.04.2016 and thereafter the landlord has led his evidence. The case is now fixed for rebuttal evidence and the application for additional evidence would not lie in the above facts and circumstances.

The reasoning, thus, which has been given by the Rent Controller is well justified and does not warrant any interference by this Court. Accordingly the present revision petition is dismissed in limine.

28.04.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No