

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

**Civil Revision No.2797 of 2017 (O&M)
Decided on : 01.06.2017**

Sardari Lal Handa (deceased) through his L.R.

... Petitioner

Versus

Dalip Kumar

... Respondent

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

Present : Mr. Namit Gautam, Advocate
for the petitioner.

Mr. L.S. Mann, Advocate for
Mr. Vaibhav Sehgal, Advocate for the respondent.

G.S. Sandhawalia, J. (Oral)

The petitioner/landlord challenges the order dated 15.12.2016 (Annexure P-6), whereby the Rent Controller, Ludhiana had closed the evidence of the petitioner by order on account of the fact that on an earlier occasion on 22.09.2016, counsel had suffered a statement that he would conclude the entire plaintiff's evidence and, therefore, the drastic steps were taken, since PW-2 had not come.

An application for recalling of the order was dismissed on 24.01.2017 (Annexure P-9), which is also subject matter of challenge, which had been filed under Section 15 (5) of the East Punjab Urban Rent Restriction Act, 1949 on the ground that the reasoning given that he could not come to the Court on the ground due to income tax raids and on an earlier occasion counsel was not present and, therefore, no ground was made out to review the said order.

While issuing notice of motion following contention was noted

on 21.04.2017:-

“Counsel inter alia submits that affidavits were tendered on 22.09.2016 of PW-2 Lavnish Handa for whom the bona fide need has been set up. On 01.11.2016, three witnesses were cross examined and the case was adjourned to 30.11.2016 for cross examination of PW-2 and he was partly cross examined on the said date. He could not come present on 15.12.2016 and accordingly, the evidence was closed by order. An application was filed for recall of the said order on the ground that since the family is involved in jewellery business and due to demonetization there were some income tax raids, he could not come present. The application has now been dismissed on 24.01.2017. It is accordingly submitted that the statement of the said witness is very important and the landlord will be prejudiced as such. The Court could have imposed costs before taking the drastic step of closing the evidence.

Notice of motion for 12.05.2017.

Dasti also.

In the meantime, final order shall not be passed.”

It is, thus, apparent that the bonafide need of PW-2 Lavnish Handa had been set up and his evidence having been closed material prejudice would be caused to the petitioner/landlord. It is settled principle that the rules of procedures are hand maids of justice. The cases are to be decided on the basis of the merits of the case and not on the basis of the technicalities. The Rent Controller could have imposed costs on account of the non-appearance at the first instance. Even at a subsequent point of time, the application had been filed explaining the absence, which has not even been acted upon.

A perusal of the petition would also go on to show that it is

the case of the landlord that the family was running a jewellery business and, therefore, eviction was being sought and it is during the days of demonetization, the witness was not present.

In such circumstances, the order as such cannot be justified. Accordingly, the present revision petition is allowed. The impugned orders dated 15.12.2016 (Annexure P-6) and 24.01.2017 (Annexure P-9) are set aside, subject to payment of Rs.10,000/- as costs for the harassment caused to the other side to defend this unnecessary litigation.

JUNE 01, 2017

Naveen

**(G.S. SANDHAWALIA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No