

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

243

CR No.3389 of 2016
Decided on : 23.02.2017

Taran Gupta

... Petitioner

Versus

Satwinder Singh

.. Respondent

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

Present : Mr.Prabhjot Singh, Advocate
for the petitioner.
Mr.Parshotam Lal Singla, Advocate for the respondent.

G.S.Sandhawalia, J. (Oral)

Present revision petition by the tenant, is directed against the order dated 28.03.2016 (Annexure P/5) whereby the Rent Controller has dismissed the application under Order 18, Rule 17 of CPC for recalling the witness, namely, Satwinder Singh for balance of the cross-examination, who happens to be the landlord.

The reason given by the Rent Controller, is that, on earlier occasion, the application was dismissed on 18.02.2016, and therefore, it was accordingly held that since another application was moved in a different form, therefore, no right existed in either party to recall and examine any such witness. The application appeared to be nothing else, but a delaying tactic on the part of the applicant, which was not permissible. Resultantly, the application was dismissed with costs of Rs.1000/-, which was to be paid as condition precedent for further conduct of case, by the applicant-Taran Gupta.

Counsel for the petitioner has submitted that the application was moved that the counsel was not present since he was busy in another set of proceedings. The application was dismissed on 18.02.2016 on account of the fact that landlord had been waiting till 2.30 pm., and the Court had no power to review its order. It is submitted that the issue of delay as such, would not arise and a party should not be put to loss on account of the non-availability of the counsel at that point of time.

Counsel for the respondent on other hand opposed the present revision petition on the ground that the conduct of as such, was to harass the landlord, who had been waiting since morning for cross examination. Therefore, the impugned order was justified once the earlier order was passed on 18.02.2016.

Perusal of the paper book would go on to show that on 05.01.2016, Satwinder Singh respondent had been partly cross-examined and remaining cross-examination has been deferred to 18.02.2016 for want of certain documents. Accordingly, it was directed that the remaining PWs would be produced on the date fixed i.e. 18.02.2016. A perusal of the zimni orders produced by the counsel would make it clear that the said witness was present along with requisite record, but neither tenant nor any body else on his behalf was present to cross-examine him. The file was taken up on four occasions before lunch, and thereafter, at about 2.30 pm., the impugned order was passed. Counsel for the landlord-respondent had then closed his evidence and case was accordingly, fixed for the evidence of the present petitioner-tenant.

A perusal of the reply of the tenant-petitioner would go on to

show that objection was taken in the reply to the rent petition that bona fide requirement was not justified and that the landlord had good running business in a double storey shop and as many as seven employees were working as sales person. He was having four other shops, with open space which were commercial in nature. It is obvious that in such circumstances, the record being not available with the landlord, the case had been fixed for want of certain documents. The reasoning thus, which is being given by the court that there was no such need to recall the witness and the examination is to be treated as nill, does not apparently seems to be justified on the face of it.

It is settled principle that parties could not be prejudiced on the act of the counsel. The application as noticed for cross examining the landlord, was filed on the same day (Annexure P-3) in which it has been mentioned that he had been called in the court of SDM for urgent matter, post lunch for recall, which was dismissed on the ground that the court had no power to review its order. The finding which has been recorded that delay was sought to be caused, does not seem to be justified in the facts and circumstances of the case. It is settled principle that the rules of procedure are handmaids of justice and the court is to adjudicate the matter on the merits and one party cannot take benefit on account of any technicality. In such circumstances, this court is of the opinion that order passed by the court below is not justified whereby the application for recalling of witness was dismissed.

The Rent Controller is directed to give one opportunity to the petitioner to cross-examine the landlord subject to payment of costs of

Rs.5000/-.

It is stated that the case is now fixed for 28.02.2016. Accordingly, the Rent Controller will give a date for cross examination of the landlord. It is made clear that only one opportunity is to be given for the said purpose. If the needful is not done, the earlier orders will come back into operation.

Resultantly, keeping in view the above, the present revision petition filed under Article 227 of the Constitution of India, is allowed and both the orders dated 18.02.2016, and subsequent order dated 28.03.2016, are set aside.

[G.S.Sandhawalia]
Judge

23.02.2017
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Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No