

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

CR No.3600 of 2017
Date of decision : 03.10.2017

Harbhajan Singh

...Petitioner

Versus

Himmat Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Jagdish Marwaha, Advocate for the petitioner.

Mr. Vijay Lath, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

The tenant is in revision petition against the order passed by the trial Court dismissing the application for leading additional evidence.

The plaintiff had filed a suit for possession by way of eviction against the petitioner-tenant on the ground that the tenancy has been terminated by a notice and, therefore, the plaintiff is entitled to possession thereof.

After framing of the issues, the parties led their evidence. Notice sent through registered post was duly exhibited. The receipt issued by the Post Office was also exhibited. The Official from the Department of Post Office was examined.

At the stage when the suit had been partly argued, the defendant-tenant-petitioner herein filed an application for leading additional

evidence with a request that the Postman who had allegedly served the registered notice be permitted to be examined.

The learned trial Court after appreciating the facts available on the file dismissed the application.

I have heard learned counsel for the parties at length and with their able assistance gone through the documents available in the paper book.

Learned counsel for the petitioner has submitted that the arguments had not been addressed partly and the learned trial Court has wrongly recorded this fact. He has further submitted that the tenant-petitioner was trying to bring the truth on the record which should have been permitted.

On the other hand, learned counsel for the respondent has asserted that a reading of the application for additional evidence would show that the defendant-petitioner has not asserted in the application that the aforesaid evidence was not in his knowledge. He has further submitted that the defendant-petitioner has even not pleaded in the application for permission to lead additional evidence that in spite of due diligence, the aforesaid evidence was not in his knowledge.

I have heard the submissions of the learned counsels. It is a case where the tenant is trying to delay the trial of the case. The entire defence of the defendant-petitioner is based upon non-receipt of the notice terminating the tenancy. In a suit for possession by way of eviction filed by the landlord, normally the only defence available is that the tenancy has not been terminated by a proper notice. In the present case, the plaintiff had

pleaded this fact. The defendant denied the same in the written statement. Both the parties led and concluded their evidence. As per the impugned order, the final arguments were partly heard.

A reading of the application would show that the defendant-petitioner changed his counsel and thereafter the present application was filed. The order passed by the trial Court specifically records that the arguments have been partly heard. In absence of the sufficient material, it is not possible to disbelieve the Presiding Judge of the trial Court.

Second submission of learned counsel is that the additional evidence would bring the truth. This fact was in the knowledge of the defendant-tenant right at the beginning of the trial. The entire case of the plaintiff is based upon termination of the tenancy. The defendant had controverted the same by filing a detailed written statement. The defendant very well knew, what defence had been pleaded and what evidence was required to be led.

For the reasons recorded above, I do not find any good ground to interfere with the detailed order passed by the trial Court.

Revision petition is dismissed with a costs of ₹20,000/-

03.10.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No