

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

**CIVIL REVISION No 3601 of 2017
DECIDED ON: MAY 18, 2017**

HARBHAJAN SINGH

.....PETITIONER

VERSUS

HIMMAT SINGH

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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

JASPAL SINGH, J

By virtue of instant petition preferred under Article 227 of the Constitution of India, petitioner has sought the setting aside of order dated May 12, 2017 (Annexure P-1) passed by learned Additional Civil Judge (Sr. Division), SAS Nagar, Mohali, whereby, an application moved by the petitioner under Order XIV Rule 1 and 2 read with Rule 5 of the Code of Civil Procedure (for short 'Code') for framing an additional issue pertaining to the service of notice of termination of tenancy under Section 106 of Transfer of Property Act (for short 'Act') for filing the suit; has been dismissed.

It has contended by learned counsel for the petitioner that

while framing of issues arising out of the pleadings of the parties, learned trial Court has omitted to frame material issue with regard to the service of notice of termination of tenancy under Section 106 of the Act, which is the foundation of the suit for ejectment filed by him. Though, it has been specifically pleaded by him in para 11 of the plaint that a notice under Section 106 of the Act was served upon the respondent/defendant terminating its tenancy prior to the filing of suit but the said fact has been specifically denied by the respondent/defendant in response to para 15 of the plaint. Thus, there is a serious dispute/controversy with regard to the service of notice under Section 106 of the Act the service of which is otherwise mandatory for the success of suit for ejectment. Though, a request was made to the learned trial Court for framing an additional issue in this regard but that was declined vide impugned order. In fact the impugned order, is absolutely violative of provisions contained under Order XIV Rule 1 and 2 and Rule 5 the Code, which require that all the material issues should be framed. Moreover, the purpose of framing of specific issues is to make the parties to the suit aware about the real controversy as well as to lead evidence to establish or to rebut the same. Moreover, by framing of an additional issue, as sought by the petitioner, through the application, which has been dismissed by learned trial Court, the opposite party is neither going to suffer any loss nor any prejudice is being caused to him. Rather it would enable the court to pronounce an effective judgment. Thus, the application for framing of additional issue be

allowed after satisfying the impugned order by way of acceptance of instant revision.

After bestowing due consideration to the submissions made by learned counsel for the petitioner and appraisal of impugned order, this Court is of the considered view that the same do not carry any legal or factual substance.

A glance at the impugned order transpires that after the completion of pleadings of the parties issues arising out of their respective pleadings were carved out on March 21, 2016 in the presence of parties and their counsel. Both the parties have already led their evidence in support of their respective pleadings fully knowing their case as well as with regard to issuance of notice envisaged under Section 106 of the Act. Now the trial is at its penultimate stage and framing of additional issue otherwise stands covered in the issues already framed and would amount to denovo trial of the matter, as both the parties would like to adduce evidence thereon. There is a specific issue No.1 to the following effect; Whether plaintiff is entitled to the possession of the suit property by ejection of the defendant from shop No.1, 2 and basement where defendant running his business? OPP

Certainly, in order to decide this issue the court is obliged to decide the question with regard to service of notice whereby, tenancy of the respondent was terminated. Similarly, as far as the question of maintainability is concerned, a specific issue No.3 is already there. The

filing of such an application even at penultimate stage of the suit is nothing but appears to have been filed just to delay the disposal of suit. The learned trial Court has rightly dismissed the application and the impugned order is absolutely in consonance with the settled proposition of law and as such it does not call for any interference by this Court.

As a sequel to the afore-said discussion, this Court does not find any merit in the instant revision. As such, it stands dismissed.

No order as to costs.

JASPAL SINGH
JUDGE

MAY 18, 2017
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<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>