

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 15.11.2017****CR No.4189 of 2017**

M/s D. Ram & Company & others

...Petitioners

Vs.

Dayanand Medical College & Hospital Managing Society (Regd.)

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

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

Mr. B.B.S.Sobti, Advocate, for the respondents.

RAJIV NARAIN RAINA, J.

This petition has been filed by the tenant/petitioner aggrieved by the impugned order dated 21.04.2017 (Annex P-10), whereby the Rent Controller, Ludhiana has dismissed its application for recalling AW-2 Dr. Sandeep Sharma for further cross-examination after framing of additional issues.

Earlier only the following issues were framed on 23.07.2014 in a petition moved by the landlord/respondent under Section 13 of the East Punjab Urban Rent Restriction Act, 1949:

- “1. Whether petitioner is entitled to the ejectment as prayed for? OPP
2. whether the present petition is not maintainable? OPR
3. Relief.”

The landlord/respondent moved an application before the Rent Controller that though one of the grounds for eviction was bona fide

requirement of the Dayanand Medical College & Hospital Managing Society (Regd.), but a specific issue had not been framed by the previous Rent Controller. The successor Rent Controller vide order dated 20.01.2017 framed the following issues not only as insisted by the landlord, but also by the tenant for the reason that the earlier issues have not been properly framed and without which the case could not be disposed of properly in a fair and proper manner:

- “1. Whether petitioner is entitled to the ejectment as prayed for? OPP
- 1A. Whether the petitioner bonafidely requires the demised shop for his use and occupation? OPP
2. Whether the present petition is not maintainable? OPR
3. Whether the present petition has not been filed through authorized person? OPR
4. Whether the petition is mala fide? OPR
5. Whether the rent note cannot be read and same is inadmissible/ OPR.
6. Relief.”

Feeling aggrieved, the petitioner/tenant approached this Court in CR No.1551 of 2017 (O&M) in case titled ‘M/s D. Ram & Company & others Vs. Dayanand Medical College & Hospital Managing Society (Regd.)’. It was argued before this court that regarding Issue No.3 “Whether the present petition has not filed through authorized person? OPR”, the onus was wrongly placed upon the tenant/petitioner. This Court in its order dated 18.05.2017 accepted the argument that the onus of Issue No.3 should be placed on the landlord/respondent and it was so ordered. It was next contended by the tenant referring to its earlier application dated 16.12.2016, where they had requested the Court for framing of issue as to ‘whether the tenancy premises are required to be in occupation by the petitioner for

getting the plan sanctioned from Municipal Corporation, Ludhiana' with onus on the landlord. The argument did not find favour and it was held that such issue is not relevant for adjudication of the eviction petition inter se the parties. It is for the landlord to decide as to how he is to use the property as per the claim set up in the eviction petition. It is not for the Rent Controller to go into this aspect and the said issue is not relevant for determining the real controversy between the parties. The argument was accordingly rejected. So also was the argument regarding proposed Issue No.6 set up by the tenant as to 'whether the property in Tagore Nagar, Civil Lines, Ludhiana occupied by the petitioner is highly deficient and insufficient to cater to the needs of the petitioner? OPP'. The Court declined the proposed Issue No.6 from being struck holding that the same is covered under larger Issue No.1A regarding personal requirement. In these terms, the petition was disposed of. The order has attained finality.

It was in this background that the application was made by the petitioner for recalling AW-2 Dr. Sandeep Sharma for further cross-examination after framing of additional issues. The application was contested by the landlord claiming that recalling witness for further cross-examination was a delaying tactic to needlessly prolong the litigation on the ejection petition filed on the ground of bona fide requirement. The petition was filed on 19.01.2014 and, thereafter a string of applications has been filed by the tenant from time to time. He had also invoked Order 6 Rule 17 CPC; application for admission or denial of facts and the application for production of documents. These three applications were taken up and disposed of by passing a single order dated 08.09.2016. That order was challenged in CR No.6743 of 2016 (O&M) and the same was dismissed vide

order dated 04.11.2016. Thereafter, along came the application for framing of additional issues, which were recast and suffered the final order by this Court, as explained above.

Both the parties have been alive to the real controversy between them and the landlord had concluded his evidence even before framing of the additional issues and did not wish to lead any further evidence. The tenant/petitioner had already cross-examined AW-2 Dr. Sandeep Sharma extensively on all points covering the amended/additional issues. It was urged by the landlord that the tenant's application was frivolous, vague and false to make out a case for recalling of the witness for further cross-examination. No provision was cited in the application coming forth from the Code of Civil Procedure or any other provision of law. Even otherwise, the only provision in the Code under which a witness can be recalled is under Order 18 Rule 17, but the provision is an enabling provision for the court and cannot be used at the instance of either of the parties to the litigation. Still further, the present proceedings arose out of an ejectment petition under Section 13 of the East Punjab Urban Rent Restriction Act and, therefore, the provisions of CPC would not strictly apply. The application has been dismissed on 21.04.2017 from where this petition arises.

The Rent Controller, Ludhiana has reasoned in his order rejecting the application that the case is fixed for tenant's evidence and he would have ample opportunity to lead evidence on the newly framed additional issues on which the onus rests on it. The arguments in this petition have been addressed around Issue No.3 'whether the petition has been filed by authorized person', the onus having been shifted to the landlord/respondent vide order of this Court in CR No.1551 of 2012 (supra).

AW-2 Dr. Sandeep Sharma, appearing as a witness for the Dayanand Medical College & Hospital Managing Society, is the Additional Medical Superintendent of the hospital. Dayanand Medical College & Hospital Managing Society is a Registered Charitable Society vide Certificate No.33 dated 05.10.1964 registered with the Income Tax Department.

Mr. Sobti appearing for the landlord/respondent has shown Ex.P1, which is the resolution passed by circulation on 13.05.2014. The Society had resolved that it requires demised space occupied by the tenants, namely, M/s D. Ram & Company and the UCO Bank for its own use and occupation for constructing a Medical College Hostel etc. in phases and the construction of the first phase of the project is almost complete requiring furnishing touches. They further resolved to move a court of law for getting the property vacated for its own use and occupation. It was unanimously resolved that Dr. Sandeep Sharma, Additional Medical Superintendent and Mr. Rakesh Bansal, Deputy Chief Engineer jointly and severally are authorized to engage advocate, sign, verify pleadings and file eviction proceedings, swear affidavits against the tenants and to make statements on oath and do all other acts as are required to conduct the eviction proceedings at the cost of society. The Society ratified and confirmed the above acts. Mr. Sobti has also shown me various exhibits, such as, Memorandum of Licence (Ex.P/3), the proposed site plan (ExP/5A), letter from the Assistant Town Planner dated 18.11.2014 (Ex.P/8) etc. required for the project.

It is not necessary for this Court to return a positive finding on the issue as to whether AW-2 Dr. Sandeep Sharma was authorized to file the ejectment petition on behalf of the Society since it lies in the domain of the

Rent Controller when the final judgment is passed. Any comment at this stage might cause prejudice to the parties.

So far as admission of additional evidence is concerned, Mr. Gautam relies on Single Bench judgment of this Court in Atma Ram Vs. Jethu Ram, 1992 (2) PLR 485 to contend that in case of evidence recorded before the framing of additional issues, witness is required to appear in the witness box after such framing to depose to new matter. When an additional issue is framed, additional evidence is required to be recorded and, therefore, witness has to be recalled for cross-examination after framing of an additional issue. Where additional issue is framed, the permission to summon the witness is to be granted by the Court for examining him on the additional issue. The Court can exercise this discretion on the application of the party or even on its own motion if it felt it necessary. For this proposition, he relies on another Single Bench judgment in Om Parkash Vs. Gurmit Singh, 2008 (2) RCR (Civil) 455.

To the contrary, Mr. Sobti has relied on a number of judgments including Gurmeet Singh & another Vs. Charanjit Kaur & another, 2016 (3) PLR 49 arguing that the CPC in Order 18 Rule 17 does not permit party to re-examine any witness to fill up lacunae in the case. There is no provision in law for calling witness again for the same purpose. Party is not well within his rights to seek recalling of the witness for the same purpose, the purpose which both knew as the ground of eviction was bona fide need. Whether Dr. Sandeep Sharma was authorized to file the ejectment petition or not, is a matter of argument before the Rent Controller and parties are free to make submissions thereon.

In Surinder Kaur Vs. Karanbir Singh, 2004 (3) PLR 41, this Court was of the view that the provisions of Order 18 Rule 17 are merely a provision for the convenience of the Court to put the witness such question, as it may deem fit and not for the parties to re-examine any witness to fill lacuna in the case. Learned Single Judge relied on a judgment of the Supreme Court in M.M.Amonkar Vs. Dr. A.S.Johari, AIR 1984 SC 931 to conclude the case.

The order of the nature the petitioner wants certainly cannot be justified under Section 151 CPC. Neither would it warrant exercise of powers to recall witness already examined for further cross-examination. Moreover, Order 18 Rule 17 is addressed to the Court and not the party and there is sufficient prohibition in the case law not to permit party to fill lacunae in the case by recall of the witness and put him through endless further cross-examination, that too, for no material purpose in deciding the case and pronouncing judgment.

In Om Parkash Vs. Vinod Kumar, 2014 (2) RCR (Civil) 603, this Court considered a case, where the grievance was that the party's counsel had not cross-examined the witness and therefore he required to be recalled. This was held to be no ground for recall of a witness. Still further, Mr. Sobti relies on a referred matter to Division Bench in Ram Dass Vs. Sukhdev Kaur & others, AIR 1981 Punjab & Haryana 301 for the proposition that the Rent Controller is *persona designata* under a special statute and is not to apply the provisions of the Code as a *stricto sensu*. The case was considered on applicability of Order 23 Rule 1(3) to rent jurisdiction and the Bench held that the Appellate Authority under the Rent Act has no power to allow a party to withdraw the ejectment petition with

permission to file fresh application. To previous judgments of this Court in Madan lal Vs. Vir Inder Kumar Kaura, 1978 PLR 388 and Shakuntla Devi & others Vs. Ramesh Kumar & others, 1980 (1) RLR 327 were overruled and the view of the Delhi High Court was accepted rendered in Mesrs Lachhman Dass Sain Ditta Mal Vs. Shri Hanuwant Dass Sud, 1968 PLR (Delhi Section) 174-B.

By extending the above proposition of law the argument of the landlord further is that even the provisions of Order 18 Rule 17 do not ipso facto apply to rent proceedings on the same analogy. Before closing evidence, the landlord had produced both Dr. Sandeep Sharma and Mr. Rakesh Bansal, Deputy Chief Engineer as its witnesses. Their depositions are sufficient according to Mr. Sobti for Controller to reach a conclusion on Issue No.3 in a wholesome manner, not to speak of Issue No.1A. Ultimately even this proposition is open to debate before the Rent Controller after the entire evidence is tendered by the parties and the case matures for hearing. In the present case evidence was closed on 12.03.2015. Application for recalling of AW-2 Dr. Sandeep Sharma was filed on 07.04.2017. The reply was filed on 10.04.2017 and the application was dismissed on 21.04.2017 and the case was adjourned to tenant's evidence. Mr. Sobti has produced photocopies of entire docket of *zimni* orders spread over 35 dates to point to the conduct of the tenant/petitioner in dragging on the case. I have perused the thick docket and returned the same after perusal.

A few words on the judgments cited are necessary. In *Atma Ram's* case, the additional issue framed was with respect to adverse possession, which had not been framed earlier. It was then natural that the witness already examined was required to appear after framing of issue on

the point of adverse possession. Since there was no issue on adverse possession framed earlier, the cross-examination of the defendant made earlier could not be taken into consideration to the extent of expanded area of defence of the suit. There can be no dispute with the proposition that in such a striking change where a completely new concept was introduced by way of additional issue, then previous evidence would remain incomplete and witness would have to be called to depose. But this is not the case here. No sea change was brought about in the additional issue framed with the introduction of Issue No.1A; 'whether the petitioner bonafidely requires the demise shop for his use and occupation', which was the heart of the matter in issue and the main ground up for trial on which the eviction petition was filed for vacation of the demised premises and the previous Rent Controller had failed to apply mind in not framing the real issues arising in the case as per pleadings and that is how the correction was made by the successor Rent Controller on 20.01.2017. That order is final since it has been dealt with in the final order passed in CR No.1551 of 2012 (supra) on 18.05.2017 and not called in question.

Mr. Sobti is absolutely firm in submitting that his client does not wish to lead any further evidence after closing it, since all they had to say on their bona fide need and requirement has already come on the record, both by way of oral and documentary evidence, including the deposition of Dr. Sandeep Sharma and they would depend on such evidence alone.

Besides, the onus of newly framed Issue No.1A was on the landlord, but so far as Issue No.3 is concerned, the petition being filed by alleged unauthorized person, the documents are already on record by way of evidence produced by the landlord of which Resolution Ex.P1 is central to

the determination of the issue and there is, therefore, sufficient material for the Rent Controller to record findings and express final opinion while pronouncing the judgment. The landlord has already suffered statement before the Rent Controller, Ludhiana to the effect that the evidence led by the landlord be read as evidence on the newly framed Issue No.1A.

Accordingly, the Rent Controller in the impugned order dated 21.04.2017 has committed no illegality in holding that the tenant has no right to further cross-examine AW-2 Dr. Sandeep Sharma on newly framed Issue No.1A and the application is nothing, but a way to prolong the litigation. The application was not maintainable and I endorse the view of the Rent Controller, Ludhiana and dismiss the petition.

15.11.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes