

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

224

CR No.49 of 2015
Decided on : 06.03.2017

Maresh Khanna

... Petitioner

Versus

Shashi Pal Khanna

.. Respondent

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

Present:- Mr.B.S.Jaswal, Advocate
for the petitioner.

Mr.V.K.Sandhir, Advocate
for the respondent.

G.S.Sandhawalia, J. (Oral)

The petitioner-tenant challenges the order dated 24.09.2014, whereby opportunity to cross-examine the landlord-Shashi Pal Khanna as AW1, was declined, and was treated as nil. The reasoning given by the Rent Controller is that opportunities were being given but the counsel for the tenant has failed to avail the same. The respondent-landlord had closed his evidence on the said date, and the case was thus, fixed for respondent's evidence.

Counsel for the petitioner has submitted that the eviction petition is based on the grounds of bona-fide requirement, non-payment of arrears of rent, and in view of stand taken by the tenant that the rent had already been paid, and the relationship of landlord and tenant was disputed, cross examination is necessary.

Counsel for the respondent, on the other hand, has submitted the that landlord was present on various occasions after framing of issues on 13.01.2012, but he was not examined. He was accordingly, harassed and

therefore, the impugned order passed, is justified.

Perusal of zimini orders which have been reproduced in the revision petition, would go on to show that three witnesses of landlord had tendered affidavits in evidence on 20.11.2012, and the case was fixed for 12.12.2012. Thereafter, on eight occasions, for different reasons, either due to non-appearance of the witnesses or officer being on leave, the matter could not be taken up for the purpose of cross examination. One witness was cross-examined on 11.12.2013 and on 27.01.2014, no witnesses were present for cross-examination. On 07.03.2014, respondent-landlord was present, but not cross-examined. Thereafter, he was not present on the next date of hearing, and the case was adjourned. It was taken by the transferee court on 10.04.2014 and thereafter, on 09.07.2014, he was not present. On 07.08.2014, he was not cross-examined, but another witness (AW-3) was present for cross examination and then, the Court time was noticed to be over and cross-examination could not be conducted. On 30.08.2014, witness was again not present, thereafter, the impugned order was passed on 24.09.2014.

Thus from the perusal of the aforesaid zimni orders, it would be clear that on various occasions, even the witnesses were not present. Therefore, the impugned order dated 24.09.2014, passed by the Rent Controller was not justified in the facts and circumstances of the present case. The matter should be decided on merits and not on the basis of technicalities and the other party can be compensated with costs. It is settled principle that the rules of procedure are handmaid of justice.

Resultantly, this Court is of the opinion that the order passed by the Rent Controller on 24.09.2014, is not justified and the same is set

aside. However, the petitioner shall pay costs of Rs.4000/- to the landlord, for delaying the cross-examination.

Petition stands allowed.

[G.S.Sandhawalia]
Judge

06.03.2017
sd

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