

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

CR No.6236 of 2015
Date of decision: 24.03.2017

Balbir SinghPetitioner
Versus
Harinder Kaur & another ...Respondents

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

Present: Mr.R.K.Bajaj, Advocate, for the petitioner.

Mr.Sandeep Arora, Advocate, for respondent No.1.

G.S. SANDHAWALIA, J. (Oral)

Challenge in the present revision petition, filed by the petitioner-tenant, is to the order dated 04.09.2015 (Annexure P4) whereby the Rent Controller, Jalandhar, has declined the application for summoning 7 witnesses.

The reasoning given by the Rent Controller is that the ownership of the disputed shop cannot be determined and there was no mention of the witnesses. The second reasoning given is that the name of the witnesses were not mentioned in the pleadings of the respondents and all these documents were required to be proved in evidence but there was no mention in the pleadings. Accordingly, reliance had been placed upon the judgment in *Union of India Vs. Orient Engg. & Commercial Co. Ltd.* *1977 AIR (SC) 2445*, whereby the Apex Court had set aside the summoning of the Arbitrator on the ground that Arbitrator need not have to undergo cross-examination and he cannot be called as a witness. Therefore, reliance upon the said judgment is, in the opinion of this Court, is not attracted to the facts of the present application. Another judgment which weighed with the

Court was of the Jammu & Kashmir High Court in **Yashpal Sawhney Vs. Gandotra Traders., M/s., AIR 1995 (J&K) 32** wherein principles were laid down as to what is the nature of litigation and the principle and nature of issues and the onus, before issuing the summons. The last reasoning which prevailed with the Rent Controller was that Order 16 Rule 1 CPC required filing list of witnesses at the time of framing of the issues and not as and when the party so desires.

Counsel for the petitioner has rightly relied upon the judgment in **M/s Steel Authority of India Ltd. Vs. M/s Steel Strips & Tubes Ltd. 2007 (4) PLR 236**, to submit that the provisions of Order 16 Rule 1 CPC are not mandatory but are only directory and the rules and procedures are meant for advancement of justice and not to subvert the same.

A perusal of the pleadings *inter se* the parties would go on to show that there was specific denial regarding the relationship of landlord-tenant and the plea taken was that the shop had been taken on rent in 1988 from one Harpal Kaur who had been proclaiming to be the owner of the property. Her son-in-law, Ranjit Singh had been collecting the rent and managing the property.

Counsel for the petitioner, accordingly, submitted that the witnesses who have been summoned are in support of the defence which the tenant had to put up in the written statement, to show that the electricity and telephone connections were in the name of Harpal Kaur. Apart from the fact that the Income Tax returns would show that the

return of income showed that rent was being paid to Harpal Kaur. Thus, the reasoning, as such, given by the Rent Controller that the ownership of the disputed shop in question is not the issue, is in contrast, in view of the fact that the relationship of landlord-tenant was denied. Similarly, the reasoning given for not mentioning the names of the witnesses in the pleadings is alien to the concept of pleadings. The names of the witnesses are never part of the pleadings and the witnesses, as noticed, are official witnesses. The same being not sustainable on the face of the record, needlessly, has to be set aside. It has been held in **M/s Steel Authority of India Ltd. (supra)** as under:

6. The learned counsel for the petitioners has challenged the said order primarily on the plea that the impugned order is contrary to the provisions of Order 16, Rule 1 of the Civil Procedure Code. The contention of the learned counsel for the petitioners is that the plaintiff-respondent has failed to give list of witnesses, therefore, the assistance of the Court was not required to be given as it was open to the respondent-plaintiff to have examined those witnesses at his own responsibility. In support of this contention, learned counsel for the petitioners placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Lalitha J. Rai v. Aithappa Rai, 1996(1) RRR 241 : 1994 (4) SCC 244**, wherein it has been held as under :-

"3. Order 16 Rules 1 and 1-A adumbrate that the witnesses at the trial Court are to be produced for examination by the parties by their filing the list, and omission thereon prohibits them to avail the assistance of the court to secure their attendance to give evidence or to produce documents on their behalf. It is true that the legislature amended Order 16 Rule 1 and added Rule 1-A to see that the undue delay should not be caused in the trial of the

suit by filing the list of witnesses or the documents at a belated stage. Thereby it envisages that on or before the date fixed by the Court for settlement of issues and not later than 15 days after the date on which issues were settled, the parties are to file the list of such witnesses whom they propose to call either to give evidence or to produce documents and they are required to obtain summonses to such witnesses for their attendance in the Court. On their failure to do the same, Rule 1 says that they may without assistance of the Court bring witnesses to give evidence or to produce documents. In other words, if they fail to obtain the summonses through Court for attendance of witnesses they are at liberty to have the witnesses brought without the assistance of the Court.

4. It would, thus, be seen that the legislature did not put a total prohibition on the party to produce the witnesses or the production of the documents for proof of the respective case. Nonetheless, when they seek the assistance of the court, they are enjoined to give reasons as to why they have not filed the application within the time prescribed under Rule 1 Order 16. It is seen that in the application it was stated by the husband of the appellant that they were under the *bona fide* impression that they have already filed the list of the witnesses along with the documents and that the mistake of non- filing the list was discovered when they were getting ready for the trial. It is not in dispute that the trial is yet to begin. In these circumstances, we think that the trial Court committed illegality in refusing to receive the list for summoning the witnesses for adduction of evidence by the plaintiff. The appeal is accordingly allowed. The orders of the trial Court and the High Court are set aside. The list already furnished is a

valid list. The trial Court is directed to summon the witnesses for examination on behalf of the plaintiff."

I find no force in the contention raised by the learned counsel for the petitioner. The Hon'ble Supreme Court nowhere laid down that for advancement of justice, the witness cannot be examined, if the list of witnesses was not given. The Order 16, Rule 1 of the Civil Procedure Code cannot be said to be mandatory, but only directory and the learned trial Court, therefore, was right in coming to the conclusion that the procedural laws are meant for advancement of justice and not to subvert the same.

7. The learned counsel for the petitioners thereafter placed reliance on the judgment of the Hon'ble Kerala High Court in the case of ***Jortin Antony and others v. Padmanabha Marthana Varma and others***, AIR 200 Kerala 369 to contend that that a party does not have a right to summon the opposite party to give evidence. It is for the Court that after the evidence is led by the parties to consider whether any witness is required to be examined for just and proper adjudication of the case.

8. Learned counsel for the petitioner also submits that it is only the Court which can compel the other party to depose in the case in the interest of justice and it is not open to the party to summon the opposite party for giving evidence. This authority does not advance the case of the petitioners as in the present case the plaintiff has summoned his own witness and not witness of the other party as is sought to be projected by the learned counsel for the petitioners. Thus, there is no force in the contention raised by the learned counsel for the petitioners. The order passed by the learned trial Court does not suffer from any jurisdictional error which may call for interference by this Court in exercise of its revisional jurisdiction."

Resultantly, keeping in view the above discussion, this Court is of the opinion that the order dated 04.09.2015 (Annexure P4) suffers

from material irregularity and illegality and the same is liable not to sustain and is, accordingly, set aside. The Rent Controller shall decide the application afresh, keeping in view the principles which are applicable for summoning of witnesses and keeping in mind the issues which have to be adjudicated between the parties.

Revision petition stands allowed, in the above-said terms.

24.03.2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No