

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.6325 of 2017 (O&M)

Date of Decision: 25.10.2017

Daljit Singh and another

... Petitioners

Versus

Baljit Kaur

... Respondent

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Divanshu Jain, Advocate,
for the petitioners.

Ms. Alka Sarin, Advocate,
for the respondent.

RAJIV NARAIN RAINA, J.

1. When this matter came up for hearing on September 18, 2017 in preliminary motion hearing this Court passed the following order upon hearing Mr Jain:-

“From the reading of the zimni orders it stands out that the Court was conscious of the application under Order 41 Rule 27 CPC and heard arguments not only on the application but in the main case from time to time. Therefore, it is incumbent upon the Appellate Authority to have considered application under Order 41 Rule 27 CPC and passed an order either separately or with the main case but containing reasons in writing as to why the additional evidence was not relevant to the eviction petition and to the case of the tenant in refutation. He relies upon the judgment passed by this Court in 'State Bank of Patiala vs. Des Raj Jain' [para. 13].

Notice of motion, returnable by 25.10.2017.

To be shown in the urgent list.

Process dasti.

Copy of this order be sent to the respondent with summons.

In the meanwhile, execution proceedings shall remained stayed till further orders.”

2. Ms. Alka Sarin, learned counsel appears for the respondent.

Vakalatnama is taken on record.

3. Since the point in controversy is short, learned counsel have been heard for final disposal.

4. In view of the settled principle that it is incumbent upon the Appellate Court to address itself to the application for additional evidence filed under Order 41 Rule 27 CPC before passing final judgment, the order has to be set aside and case remanded when there is failure to do so.

5. Justice requires that such an application should be decided prior to the main appeal to enable parties to reconcile themselves to the order and give them opportunity, in case, they wish to challenge the same in a superior Court. There has been failure in the Appellate Court to have considered this aspect and, therefore, the remand is necessitated for passing an order under Order 41 Rule 27 CPC in accordance with law and thereafter pass final judgment. Since application under Order 41 Rule 27 CPC is not to be allowed automatically it will be open to the Appellate Court to consider the relevancy of the additional evidence sought to be produced and whether it is admissible under the Indian Evidence Act, 1872.

6. Accordingly, this petition is allowed. The impugned order is set aside. The case is remanded for passing orders on the application under Order 41 Rule 27 CPC which application is restored on Board of the Appellate Authority under the Rent Act for disposal on merits on any date

fixed in the discretion of the Authority when opportunity of hearing would be granted to both the sides to argue whether the additional evidence should be let in or not. The order must contain reasons in writing.

7. Ms. Alka Sarin submits that her client is an octogenarian and has priority and, therefore, the Appellate Court will endeavour to decide the application in the first instance and thereafter pass final orders after the decision is taken on the application under Order 41 Rule 27 CPC to provide an opportunity to either side to seek revision of the order, in case the feel aggrieved and if advised. It is expected that the entire exercise will be completed within three to four months from first appearance in terms of this order.

8. Parties to appear before the Appellate Authority concerned on 06.11.2017.

9. Till decision is made on remand and one month thereafter, the petitioning-tenants will not be dispossessed from the demised shop, if decision is adverse to the petitioners to enable them to approach this Court for review of the order, if desired.

25.10.2017
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(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned *Yes*

Whether reportable *No*