

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.7297 of 2017(O&M)

Date of Decision: 07.11.2017

Gurdev Singh(since deceased) through
his LRs & ors.

... Petitioners

Versus

Harbans Singh

... Respondent

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

Present: Mr. Sapan Dhir, Advocate,
for the petitioners.

Mr. Sanjeev Soni, Advocate,
for the respondent.

RAJIV NARAIN RAINA, J.(Oral)

1. This is tenants petition upon eviction from the demised premises.

Other than the merits of the case it is argued that the appellate authority has committed error in not deciding the application for additional evidence with the main case and accordingly the order of eviction deserves to be set aside for passing judgment afresh after granting leave to adduce a sale deed as additional evidence.

2., Even though the application under Order 41 Rule 27 of CPC has not been decided by the appellate Court by an order but the nature of the additional evidence sought to be produced, with the first attempt for leave to introduce it by filing an unsuccessful application before the Rent Controller comprising photographs of the property owned by Uggar Singh, the brother of the landlord, but not the sale deed, and then at the stage of appeal by production of sale deed of 2015 of the same property, to which landlord is not a party, cannot be considered significant additional evidence worthy of invoking provision of order 41 Rule 27 of the CPC to turn the case around in

favour of the tenant for a remand to the appellate authority to pass an order on the application and then pass fresh orders in the main appeal.

3. I do not think the sale deed was an essential document required to pronounce judgment or to promote a substantial cause to avoid a miscarriage of justice. It would be contrary to the scheme of the Code to permit a party to adduce additional evidence without satisfying any of the three conditions mentioned in Order 41 Rule 27 of the CPC.

4. Moreover, in not deciding the application under Order 41 Rule 27 CPC in the face of substantially the same request made before the Rent Controller being turned down and no revision filed questioning the order, in my considered view, would not give an occasion to the appellate authority to pass an independent order on the application or to give reasons for rejections in the main appeal.

5. In cases arising out of Order 41 Rule 27 of the CPC, it will have to be seen by the Court as to what is the character of the evidence for which permission is sought which was not produced in the trial court or was not available then or had not come into existence before conclusion and how it impacts the final decision evicting the petitioner from the demised premises and is necessary for deciding the case and pronouncing judgment.

6. I also fail to see how property owned by the brother of the tenant to carry on his business can adversely affect the case of the landlord for regaining possession of his own demised premises for personal need for expanding his tailoring business in the same building. What better place could there be for the landlord I wonder than his own building.

7. The landlord respondent occupies the ground floor shop and the petitioner was in occupation of the 2nd floor. The present petition is confined

to ejectment from the 2nd floor of the demised premises. Concededly, another petition is pending before the Rent Controller filed by the present respondent for eviction of the petitioner from the 1st floor for the tenanted premises.

8. Still further, learned counsel for the respondents submits that the petitioners, LRs of the late Gurdev Singh own the adjoining 4 storied building bearing MC No.4595, a photograph of which has been produced in Court. Mr. Dhir pleads no instructions whether his client owns the building, but it is pointed out by Mr. Soni from the cross examination of the tenant an admission that the adjoining building is owned by the petitioner's side. The petitioners are in the same business of tailoring run through 4 floors of their own building and the first and second floors of the respondent's building from which the petitioners have been evicted from its 2nd floor of the tenanted premises by the impugned order.

9. Let us assume arguendo that the sale deed is on record. What effect it would have to the ejectment petition, is not far to see. It would have to my mind no impact. The brother is free to run his copper business or do whatever he wants from the building and the tenants cannot dictate terms to the brother of the landlord and must set up their own defence to resist eviction by showing the need of the landlord is not bona fide. There are no firm cornerstones on which the edifice built by Mr. Sapan Dhir on the sale deed and of use of part of brother's premises can stand for the dismissal of this petition arising out of an eviction petition filed under Section 13 of the East Punjab Urban Rent Restriction Act, 1949.

10. No cogent ground for interference is made out in the concurrent findings of fact recorded by the Rent Controller and the Appellate Authority after having regard to the pleadings and upon appreciating the evidence on

record concluding that the landlord has prima facie established his claim for personal necessity to expand his business upwards in the demised commercial building.

11. The petition has no merit and is hereby dismissed.

07.11.2017
monika

(RAJIV NARAIN RAINA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>