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

Civil Revision No.8028 of 2015(O&M)

Date of decision: 15.5.2017

Raj Pal

...Petitioner

Versus

Vish Ram

...Respondent

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

Present: Mr. Kamaldip Singh Sidhu, Advocate for the petitioner.

Mr. Ramesh Sharma, Advocate for the respondent.

G.S.SANDHAWALIA, J. (Oral)

The petitioner-tenant challenges the order dated 17.9.2015 passed by the Rent Controller, Chandigarh whereby his application for directing the landlord to give his thumb impressions for the purpose of examination from a hand writing expert had been dismissed. The ground taken is that the Court cannot be a tool to collect evidence for any of the parties and it is for the parties to discharge their burden of proof. It has been further observed that when the evidence is to be led the tenant cannot be allowed to tell the landlord in which manner evidence is to be led by him.

The said reasoning cannot be held to be justified and the order can be termed as a non-speaking order.

It is the case of the respondent-landlord that he is owner/landlord of the tenanted premises which was allotted by the Chandigarh Housing Board in the year 1993. It is further alleged that the landlord had mortgaged the house to one Jagdish Mittal and the petitioner-

tenant had come to the house along with one Vasu Dev who is his cousin and assured that he would repay the mortgaged amount to said Jagdish Mittal. Resultantly, he was inducted as tenant in the year 2002. Resultantly, eviction petition was filed on various grounds including the non payment of rent and bonafide requirement.

The tenant's case was that house had been sold to Smt. Shayamawati wife of Vasu Dev and reliance was placed upon various documents like GPA, will, affidavit and agreement to sell etc. It was further alleged that she had sold the house to the petitioner-tenant and he was thus owner of the premises in question and there was no relationship of landlord and tenant interse the parties.

The issues were framed on 21.12.2011 and in view of the denial of relationship of landlord and tenant, no provisional assessment of rent had been made. Issue no.1 framed was regarding the relationship of landlord and tenant between the parties and issue no.5 was whether the landlord had sold the house to one Smt. Shayamawati who had further sold the same to the petitioner-tenant. The onus of issue no.5 was thus put upon the petitioner-tenant. It is in such circumstances the application (Annexure P/5) was filed on 12.1.2015 (Annexure P/5) for taking thumb impressions so that they could be examined by the hand writing expert and compared with the documents. The same was contested by filing reply on the ground that there was a delay and the petition was filed in August, 2010. It was further held out that the documents which are relied upon were false and fabricated and therefore, it would cause prejudice to the landlord.

As noticed the Rent Controller, Chandigarh has failed to take

into consideration that the tenant as such was to lead his evidence and onus of issue no.5 was upon him. It is in such circumstances he had filed the said application. The controversy as such rotates around the fact that whether there was any relationship of landlord and tenant interse the parties and whether whether the sale had been effected in favour of the tenant. The application thus would help the Court to adjudicate upon the issue which it had failed to appreciate rather a finding has been recorded that the landlord cannot be told in which manner the evidence is to be led. As noticed it was at the stage of the evidence which was to be led by the tenant and therefore, the observations also would go on to show that the Rent Controller, Chandigarh did not take into consideration the fact that the onus was on the tenant to prove issue no.5 and therefore, he asked for the necessary permission.

The argument which has now been raised by the counsel for the respondent is that the said documents are forged and fabricated and the original documents are not on record.

However, it is not clear from the reply filed whether the original documents have been placed on record or not. This aspect has not been appreciated by the Court as such. The fact remains that by virtue of the said order the right of the petitioner to lead evidence on the basis of pleadings as such has been denied and the order passed by the Rent Controller, Chandigarh thus suffers from material irregularity and illegality and cannot sustain.

Accordingly, the present revision petition is allowed. The order dated 17.9.2015 passed by the Rent Controller, Chandigarh is set

aside. The Rent Controller shall redecide the application in question afresh after taking into consideration whether the original documents from which the thumb impressions are to be taken are available on record or not. The necessary exercise be conducted within a period of two months from the receipt of a certified copy of this order.

May 15, 2017
Pka

(G.S.SANDHAWALIA)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No