

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 05.12.2017****CR No.8489 of 2017 (O&M)**

Subhash Chander & another

...Petitioner(s)

Vs.

Ravinder Kumar & others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Gagandeep Singh Sirphikhi, Advocate, for the petitioner(s).

RAJIV NARAIN RAINA, J. (ORAL)

1. The Rent Controller, Batala having summoned the Record Clerk by order through arrest warrant for 25.10.2017, he appears quite evidently from a reading of the *zimni* orders to have unceremoniously buried the testimony of that official witness without any remark or comment in the impugned order dated 07.11.2017 to scrap his appearance in the witness box. That apart, the Rent Controller, I should imagine, ought to have properly weighed the cumulative effect of the interim orders passed, preceding the closure of evidence of the petitioner since, inter alia, the institution of the eviction petition under the rent law, when once the petition was dismissed in default of landlord in the year 2015 for non-appearance and the petition restored in April, 2016 with the petitioner. The Rent Controller should have also seen the duration and the time consumed by the landlord in leading/producing his evidence. The evidence of the respondent(s) started on 19.12.2016. The Rent Controller allowed the application of the petitioner/tenants for summoning of official witnesses being the Wasika Navis, the Record Clerk etc. working in different government offices to

enable the petitioner-tenants to try and resist a finding of relationship between the parties as landlord and tenant, the petitioners claiming themselves to be the landlords of the demised premises.

2. It may be noticed that last opportunity was granted by order dated 21.09.2017 for 13.10.2017. On 13.10.2017, the order was passed to summon two official witnesses through arrest warrants for 25.10.2017.

3. Mr. Sirphikhi says that the evidence of Ashwani Kumar has been recorded and only the petitioner's statement and of the Record Clerk, whose testimony is left hanging by the impugned order, which evidence is all that is left in defence of the petitioners. This means last opportunity given on 21.09.2017 stands dissolved in the subsequent order. In the last but one order passed before the impugned order, there was no indication of any last opportunity and, therefore, I am inclined to think that Mr. Sirphikhi is correct in his submission that the impugned order, if allowed to stand, would surely result in miscarriage of justice because the entire evidence of the tenants would not be available to the Rent Controller for a final determination of the dispute and I have, therefore, no hesitation in setting aside the order dated 07.11.2017. It is ordered accordingly.

4. The next date fixed by the Rent Controller is 13.12.2017, when the petitioners will enter into the witness-box for his/their statements to be recorded. Since evidence has been closed, the Rent Controller will have to again officially summon the Record Clerk for recording of his deposition since the request has been earlier allowed by interim order dated 13.10.2017, in case it is possible in the constraints of time to summon the Record Clerk for recording of his deposition on 13.12.2017, then it shall be so done. If for any reason, the Record Clerk is not served with the summons, then a short

date may be fixed for the purpose, after which, the evidence may be closed and the main case can be set down for rebuttal and arguments.

5. Accordingly, the instant petition is allowed in the above terms.

6. Order dasti.

05.12.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>