

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

245

CR No.906 of 2017

Date of decision: 15.05.2017

Subhash Chand

...Petitioner

Versus

Sarwan Kumar

...Respondent

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

Present: Mr.Raman Mohinder Sharma, Advocate, for the petitioner.

Mr.Pankaj Katia, Advocate, for the respondent.

G.S. SANDHAWALIA, J. (Oral)

The petitioner-tenant challenges the order dated 11.07.2016, passed by the Rent Controller, Samana, whereby the right to cross-examination of PW1-Sarwan Kumar, the respondent/landlord was treated as nil, in view of the earlier order dated 04.07.2016. Challenge has also been raised to the order dated 21.11.2016, passed in the subsequent application, for recalling the said witness, which was dismissed. It is pointed out that the case is now fixed for 29.05.2017.

While issuing notice of motion on 03.03.2017, the following contention was noted:

“Learned counsel for the petitioner submits that another application for placing on record the cross-examination of Sarwan Kumar-respondent has been filed but the same has not been listed. He also submits that landlord could not be cross-examined and there are as many as six petitions filed against the other tenants also and there are talks of compromise going on between the parties.

Resultantly, the cross-examination effected on 22.05.2016 was only in the form of suggestions and no effective cross-examination could be conducted and the Rent Controller ordered further cross-examination of PW1 as NIL on 11.07.2016. He also submits that the case is now fixed for

21.03.2017 for the evidence of the petitioner-tenant. Relationship of landlord and tenant is disputed and therefore, the petitioner would be seriously prejudiced if effective cross-examination of the landlord is not done.

Notice of motion for 04.05.2017.

Respondent No.1 be served through dasti process also.

In the meantime, trial may continue but final order will not be passed. If the service is not effected, interim protection is liable to be vacated/modified.”

Counsel for the petitioner has, accordingly, submitted that it was only on account of a large number of petitions by the landlord against various tenants, filed that the cross-examination of the landlord could not be conducted. He submits that ejectment is sought on the ground of non-payment of rent, building being unfit and unsafe and for personal necessity. It is submitted that the cross-examination of the landlord would, thus, be necessary, as otherwise, the averments made in the petition would, as such, be treated as correct, and serious prejudice would be caused to the tenant. It is submitted that the other side can be duly compensated by way of payment of costs.

Counsel for the respondent, on the other hand, submits that the proceedings were fore closed on account of the lack of cross-examination and the landlord had been put to harassment.

Keeping in view the above discussion, this Court is of the opinion that the rules of procedure are handmaids of justice. A perusal of the order dated 30.05.2016 would go on to show that the Court never imposed costs upon the petitioner to put him on caveat that his evidence

is likely to be closed, before taking the drastic step, as such, on 04.07.2016.

In such circumstances, the present revision petition is allowed, the impugned orders dated 11.07.2016 and 21.11.2016 are set aside, subject to payment of costs of Rs.5000/- to the respondent. The petitioner shall be given an opportunity to cross-examine the respondent, who would present himself on 29.05.2017. In case the said cross-examination cannot be completed on account of the respondent not being present, one more effective opportunity shall be given.

15.05.2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No