

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

105

CR No.1505 of 2017 (O&M)
Date of Decision : 09.05.2018

Umesh Prabhakar

..... Petitioner

Versus

Pardeep Diwan

..... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. D.R. Punia, Advocate
for the petitioner.

Mr. Kunal Dawar, Advocate
for the respondent.

AJAY TEWARI, J. (Oral)

This petition has been filed against the order of the Rent Controller allowing an application for leading evidence.

The essential facts are that in the petition for eviction the evidence of the petitioner-landlord was closed on 26.02.2016 and the matter was fixed for the evidence of the respondent-tenant. Since till 19.01.2017 (i.e. for 11 months) no evidence was led, & by order of that date the evidence of the respondent was closed. Thereafter the respondent moved an application under Order 18 Rule 17-A CPC praying that he could not appear to give his testimony because of the continuing ill health of his wife and consequently he should be permitted to lead his evidence. By the impugned

order the Rent Controller held that though an application under Order 18

Rule 17-A CPC was not maintainable, yet came to the conclusion that the respondent had succeeded in showing that he could not lead his evidence due to circumstances beyond his control and consequently allowed him three opportunities to lead the evidence.

The primary contention raised by the counsel for the petitioner is that the respondent did not challenge the order of closing of evidence and an application under Order 18 Rule 17-A CPC did not lie.

Counsel for the respondent has fairly accepted that it was open to the respondent to have challenged the order closing his evidence and that an application under Order 18 Rule 17-A CPC did not lie but has argued that once the Rent Controller came to the conclusion that the omission of the respondent to lead evidence was not entirely his fault, it did not err in granting permission to the respondent to lead evidence. It is moreover the stand of the counsel for the respondent that the respondent would only examine himself and he would not lead any other evidence. As per him if the respondent is denied even this opportunity, the case of the petitioner would be won by walk over.

In my considered opinion, though the counsel for the petitioner is right in arguing that an application under Order 18 Rule 17-A CPC did not lie yet keeping in view the finding of the Rent Controller that the respondent was not entirely at fault and had not been able to lead his evidence and in view of the fact that the counsel for the respondent has stated that he would not avail three opportunities and would not lead any other evidence except for the deposition of the respondent, I do not deem it appropriate to interfere with the impugned order. Counsel for the

30.05.2018 and the respondent would appear on that date with his affidavit in examination-in-chief and the petitioner would be at liberty to cross-examine him and the respondent would present himself for cross-examination.

Petition is disposed of in the above terms.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

May 09, 2018
ashish

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No