

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 1814 of 2017
Date of decision:- 16.01.2018

Raminder Singh Sethi and Anr ...Petitioners
Versus
Sunil Kumar Ghambhir ...Respondent

BEFORE: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Namit Gautam, Advocate,
for the petitioners.

Mr. Paras Talwar, Advocate,
for the respondent.

RITU BAHRI J. (Oral)

Petitioner (tenant)-Raminder Singh has filed the present civil revision against the order dated 06.02.2017 (**Annexure P6**) passed by Rent Controller, Ludhiana, whereby the application preferred by the petitioner, who is respondent in the rent petition, for de-exhibiting the documents mentioned/exhibited in the Court on 02.05.2016 in examination-in-chief alongwith documents in question by PW1 Sunil Kumar (respondent No.1 herein) stands dismissed.

A perusal of the file shows Sunil Kumar Gambhir appearing as PW1 exhibited the documents i.e. Ex. P1 is certified copy of sale deed dated 09.01.2012, Ex. P2 is certified copy of sale deed dated 24.07.2013, Ex. P3 is certified copy of sale deed dated 10.03.2015. Ex. P 4 and Ex. P5 are original Jamabandis and Ex. P6 is site plan which bears signatures of witness Sunil Kumar and tenant moved an application for de-exhibiting the said documents which was dismissed by the Rent Controller.

Learned Counsel for the petitioner argued that, PW1 Sunil Kumar

Gambhir has tendered his affidavit Ex.PA and along with the said affidavit he has tried to exhibit the documents Ex. P1 to Ex. P6. The alleged documents have not been proved according to law nor the same are not admissible in evidence and therefore, the same are liable to be de-exhibited. Respondent No.1 has exhibited the alleged sale deed dated 09.01.2012 as Ex. P1 and he is neither a signatory nor party to the alleged sale deed. Counsel for the petitioner further stated that alleged documents was neither executed nor prepared in his presence. Learned Counsel for the petitioner has referred the judgment of this Court in case **Sandeep Ghai Versus Harminder Singh and Others in CM No.17813 CII of 2016 and Civil Revision No. 5770 of 2016, decided on 07.02.2017** whereby application for de-exhibiting the documents had been dismissed and that order was set aside and direction had also been given to the Rent Controller to decide the objections made by the tenant.

On the other hand, learned Counsel for the respondent also referred judgment passed by this Court in case **Smt. Jaswant Kaur Versus Satish Kaur Aggarwal and Others 2016(4) PLR 632: 2014 (1) CivCC 263.** that the same application is not maintainable.

After hearing the learned counsel for the parties, this revision deserve to be allowed. The judgment referred by the counsel for the respondent i.e. **Smt. Jaswant Kaur's case (supra)** will not be applicable in the present case as in that case the plaintiff was aggrieved of an order whereby an application moved at the instance of the defendants for de-exhibiting documents tendered along with affidavit in examination-in-chief had been allowed. The ground for allowing the application that the documents placed on the record by way of affidavit, are beyond the

pleadings. However, revision was allowed on the ground that the defendant would have right to raise objection with regard to admissibility and mode of proof of the documents as and when the plaintiff appears himself for cross-examination.

In the present case, the documents referred by the plaintiff i.e. Ex. P1 to Ex. P3 are sale deeds dated 09.01.2012, 24.07.2013 and 10.03.2015, Ex. P4 and Ex. P5 are original jamabandis and Ex. P6 is site plan. The defendant is not a party to said documents and hence at the initial stage itself it would be necessary to decide the objections with regard to the admissibility towards exhibiting these documents. Reliance in this regard placed upon the judgment referred by the appellant i.e. **Sandeep Ghai Versus Harminder Singh and others in Civil Revision No. 5770 of 2016 decided on 07.02.2017**. A perusal of this judgment shows that the tenant Haminder Singh had appeared in examination-in-chief alongwith documents Ex. P1 to Ex. P57. The defendants raised an objection with regard to admissibility of the said documents. The Rent Controller, although recorded the objections but did not decide the same and fixed the case for cross-examination of PW1 Harminder Singh. Thereafter, the application for de-exhibiting the documents were dismissed and revision was allowed. While deciding the case, this court refer to Order XIII, which deals with production, impounding and return of documents would be required as Rules 3 to 7 thereof would be relevant for seeking answer to the question which arises in the case. These provisions clearly indicate that objection to the admissibility of a document should be raised by the party so objecting before the endorsement is made and the court is obliged to consider the said objection, form its opinion and record the same which is followed by and

endorsement thereon with regard to the document being admitted or not in evidence. Once a document has been endorsed as admitted and exhibited in terms of Rule 4 of Order XIII of the CPC, it would be possible to de-exhibit the same and, therefore, the court is obliged to take a decision on the objection raised by either of the parties at that stage itself. The relevant provisions of Order XIII and Rule 4 and 6 are as under:

Order XIII Rule 4 Endorsements on documents admitted in evidence.- (1) Subject to the provisions of the next following sub-rule, there shall be endorsed on every document which has been admitted in evidence in the Suit the following particulars, namely:-

- (a) the number and title of the suit,*
- (b) the name of the person producing the document,*
- (c) the date on which it was produced, and*
- (d) a statement of its having been so admitted; and the endorsement shall be signed or Initialed by the judge.*

(2) Where a document so admitted is an entry in a book, account or record, and a copy thereof has been substituted for the original under the next following rule, the particulars aforesaid shall be endorsed on the copy and the endorsement thereon shall be signed or initialed by the Judge.

Order XIII Rule 6: Endorsements on documents rejected as inadmissible in evidence.- Where a document relied on as evidence by either party is considered by the court to be inadmissible in evidence, there shall be endorsed there on the particulars mentioned in clauses (a), (b)

and (c) of rule 4, sub-rule (1), together with a statement of its having been rejected, and the endorsement shall be signed or initialled by the Judge.

The petition for deciding the objections before endorsement is made is that the party tendering the evidence may take such steps as may be available to it to get the lacuna remedy. Once inadmissible evidence is admitted on record, it is impossible to say what its effect may be on the mind of the person who hears it. It creates an atmosphere of prejudice, effecting fair trial. It may, unconsciously, be regarded by judicial mind as corroboration of some piece of evidence legally admissible and thereby obtain for latter quiet undue weight and significance.

In the present case, the objection with regard to documents exhibited Ex. P1 to Ex. P6 that the tenant was neither a signatory nor party to the alleged sale deeds. The alleged documents were neither executed nor prepared in his presence. These documents are liable to be de-exhibited and the objection has already been raised regarding the mode of proof and inadmissibility etc., of these documents and the law is that the objection regarding the admissibility and mode of proof is to be decided first, as and when the same is raised. Once the document has been admitted in evidence and marked as exhibit, the objection that it should not be admitted in evidence or that the mode adopted for proving the document is irregular, cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. This is based upon the principle of rule of fair play for balancing the equities between the parties so that none is prejudiced. For instance, if an objection is taken by a party before the admission in evidence or a document and the same is sustained, it would be enable the party

tendering the evidence to cure the defect and resort to such mode of proof as would be regular. However, if the decision is not taken, then the party tendering evidence is put to disadvantage. Therefore, a prompt objection and a decision thereon does not prejudice any of the parties but would enable the court to apply its mind and pronounce its decision on the question of admissibility there and then. Even though strict rules of CPC are not applicable in rent application. However, the Rent Controller is bound to follow the basic procedure of CPC at the time of exhibiting the documents under Order XIII Rule 4 to 6.

Keeping in view the law laid down in **Sandeep Ghai's Case** (**supra**), the present revision is being allowed and order dated 06.02.2017 (Annexure P-6) is set aside and the matter remanded back with a direction is, thus issued to Rent Controller to decide the objections as raised by counsel for the petitioner with regard to admissibility of the documents prior to further proceedings with the case, if already not decided.

The present revision petition stands disposed of in the above terms.

16.01.2018

Riya Grover

(RITU BAHRI)
JUDGE

Whether speaking/reasoned: Yes

Whether reportable : No