

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

CR No.2408 of 2018(O&M)

Date of decision:17.5.2018

Gian Chand Tanwar

.....Petitioner

VERSUS

Santosh Kataria and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Rahul Arora, Advocate for the petitioner.

Mr. S.K. Aneja, Advocate for respondent No.1.

REKHA MITTAL, J.

The present petition directs challenge against order dated 09.03.2018 (Annexure P-1) passed by the Rent Controller, Fazilka whereby application (Annexure P-2) filed by the petitioner seeking direction to adduce additional evidence has been dismissed.

Counsel for the petitioner would urge that respondent No.1 has filed application under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (in short 'the Act') for eviction from the demised premises on the averments that respondent No.2 was inducted as a tenant in shop in question by Sh. Jagdish Rai Kukkar, earlier owner and he has sublet the same to the petitioner. The petitioner and Rakesh Kumar Dhuria, have denied averments raised by respondent No.1 qua subletting of the tenancy premises. The petitioner has raised a categorical plea that he has been occupying the shop in question for the past about 30 years as a direct tenant under Sh. Jagdish Rai Kukkar. In order to substantiate said version, the petitioner has produced receipts in original regarding payment of rent

to Sh. Jagdish Rai Kukkar, his son, daughter in law and grandsons. Sh. Jagdish Rai Kukkar has passed away, therefore, cannot be examined qua the receipts relied upon by the petitioner. The petitioner examined Himanshu Kukkar RW9 grandson of Sh. Jagdish Rai Kukkar who did not identify handwriting on receipts mark-1 to mark-4 and signatures of Sh. Jagdish Rai Kukkar on receipts Ex.RW9/1 to Ex.RW9/34, therefore, there arose necessity to examine Sh. Satish Kumar son of Sh. Jagan Nath of Fazilka who can identify handwriting and signatures of Sh. Jagdish Rai Kukkar and handwriting expert to submit his opinion regarding handwriting and signatures of Sh. Jagdish Rai Kukkar on the basis of comparison with the receipts admitted by Himanshu Kukkar RW9 with the receipts aforesaid. It is argued with vehemence that a serious prejudice shall be caused to the petitioner in case he is not permitted to examine the aforesaid witnesses by way of additional evidence when the respondent/petitioner can well be compensated with costs for delay, if any, attributable to the petitioner. Counsel would pray that the petitioner would ensure presence of witnesses to be examined by way of additional evidence in case he is allowed one effective opportunity for the purpose.

Counsel representing respondent No.1 has supported the impugned order with the submission that application for additional evidence is nothing but filed with a clear intent to keep the proceedings pending. It is argued that after concluding evidence by the respondent/petitioner, the present petitioner availed umpteen number of opportunities for adducing evidence. After Himanshu Kukkar RW9 was examined on 20.11.2017, the petitioner availed five opportunities for adducing remaining evidence. The petitioner examined two more

witnesses Vandana Sharma RW-10 and examined himself as RW-11 on the dates fixed by the Rent Controller. The petitioner knew it very well that Himanshu Kukkar has not admitted handwriting and signatures of Sh. Jagdish Rai Kukkar on certain documents but despite that the petitioner gave up Vyom Kukkar and Naresh Kumar Kukkar being unnecessary vide his statement recorded on 20.11.2017 sufficient to show that the instant application is mala fide and filed with a sole object to delay culmination of eviction proceedings.

The Rent Controller has noticed that the petitioner availed 13 effective opportunities for adducing evidence. Perusal of the various zimini orders reproduced in the grounds of revision makes it evident that after examination of Himanshu Kukkar RW9 on 20.11.2017, the case was adjourned five to six times for remaining evidence of the petitioner. On a pointed query by the Court, counsel has fairly conceded that Vyom Kukkar and Naresh Kumar Kukkar were summoned for proving the rent receipts relied upon by him but gave them up being unnecessary. Once the petitioner himself has given up the witnesses summoned for proving the rent receipts relied upon by him without any tangible explanation, he cannot be heard to say that he needs to be given an opportunity to examine some more witnesses despite his having availed five effective opportunities even after examination of Himanshu Kukkar RW9. In this view of the matter, I do not find an error much less illegality in the impugned order warranting intervention in exercise of limited revisional jurisdiction. That being so, the petitioner cannot derive any advantage to his contention from the judgments **Inderjeet Aggarwal Vs. Manoj Aeri and others, 2015(1) RCR (Rent) 392, K.K. Velusamy Vs. N. Palanisamy, 2011(2) RCR**

(Civil) 875 and **Garja Singh Vs. Gram Panchayat, Harbanspura,**
1997(4) RCR (Civil) 221 passed in view of peculiar facts and
circumstances obtaining in the cases.

For the foregoing reasons, the petition fails and is accordingly
dismissed. Nothing stated hereinbefore shall be construed as an expression
of opinion on merits of the case.

MAY 17, 2018		(REKHA MITTAL)
‘D. Gulati’		JUDGE
Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no