

In the High Court of Punjab and Haryana at Chandigarh

CR No. 3473 of 2017(O&M)

Date of Decision:1.6.2018

Rajiv Kataria

---Petitioner

vs.

Raman Kumar Sharma

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Amit Jain, Advocate
for the petitioner
Mr. Dinesh Gupta, Advocate
for the respondent

Rekha Mittal, J.

The present petition directs challenge against order dated 23.12.2016 passed by the Rent Controller, Chandigarh whereby application filed by the petitioner-landlord for summoning the witness was dismissed by closing evidence of the petitioner.

Counsel for the petitioner has submitted that the petitioner filed application under Section 13(2) of the East Punjab Urban Rent Restriction Act, 1949 (as applicable to Chandigarh) (in short “the Act”) for ejectment of the respondent from first and second floor of House No. 3063, Sector-27-D, Chandigarh on the ground that the respondent-tenant is guilty of making alterations in the tenancy premises, materially impairing value and utility of the building as he has made additional accommodation and structural changes without permission of the petitioner-landlord and against sanctioned plan of the building, in violation of Chandigarh Byelaws.

It is argued that the eviction application was filed in the year 2013.

During pendency of the case, a report dated 8.5.2015 was submitted by the Junior Engineer of the area concerned and a show cause notice under Rules 14 and 10 of the Chandigarh Estate Rules, 2007 read with Section 8-A of Capital of Punjab (Development & Regulation) Act, 1952 was issued calling upon the addressee to explain his position with regard to the changes made in the tenancy premises. It is further argued that the later developments that took place in the year 2015 were not in existence at the time of filing of eviction application. It is further argued that though there was some delay on part of the petitioner to file application for summoning Sh. Umed Singh, Junior Engineer from the office of SDO (Building) alongwith inspection report and show cause notice but this evidence is very material and relevant for complete and effective adjudication of the matter in controversy. Further argued that as application for eviction has been filed by the petitioner, delay would be of adverse consequence for the petitioner-landlord and not for the respondent-tenant. It is argued that the respondent can well be compensated with costs for delay, if any, attributable to the petitioner but the same should not be construed to deny right of the petitioner to adduce material evidence that has strong bearing on the issue in controversy.

Counsel representing the respondent has supported the impugned order with the submissions that the petitioner availed umpteen number of opportunities for adducing evidence but failed to conclude the same despite grant of last opportunity subject to payment of costs, therefore, there was no alternative with the court except to close his evidence and dismiss the application filed at a highly belated stage. It is further argued that the petitioner is not an ordinary litigant as he is a professional Advocate, who by taking advantage of his position has procured the inspection report and show cause notice in order to strengthen his cause pleaded in the application for eviction.

I have heard counsel for the parties, perused the paper book

particularly the documents annexed with the petition.

Indisputably, the application for eviction has been filed by the petitioner seeking ejectment of the respondent on the solitary ground of the tenant being guilty of making additions and alterations in the tenancy premises that has materially diminished the value and utility of the building in question. No doubt, the petitioner being the landlord cannot keep the proceedings alive on the pretext that delay would be of adverse consequence for the landlord and not for the tenant. Perusal of the order passed by the Rent Controller would reveal that the petitioner has already availed large number of opportunities for adducing evidence. Nevertheless, the documents sought to be produced and proved by summoning Sh. Umed Singh, Junior Engineer from the office of SDO (Building) came into existence in the year 2015 i.e. during pendency of proceedings as the application for eviction was filed in May 2013. For delay on the part of petitioner, the respondent can well be compensated with costs. On the contrary, a serious prejudice may be caused to the petitioner in case he is not permitted to adduce evidence by examining Sh. Umed Singh, Junior Engineer alongwith relevant records. In this view of the matter, it is expedient in the interest of substantial justice that the petitioner is allowed one opportunity to examine Sh. Umed Singh, Junior Engineer from the office of SDO (Building) in terms of application dated 23.12.2016 (Annexure P-2) subject, however, to the following conditions:-

1. The petitioner shall be entitled to only one effective opportunity for examination of Sh. Umed Singh, Junior Engineer from the office of SDO (Building) but he shall ensure presence of the witness before the Court on the date to be fixed by the Rent Controller. He shall be at liberty to seek assistance of the Court by obtaining dasti process.
2. The petitioner shall pay a sum of Rs. 20,000/- towards costs by

way of demand draft in the name of respondent, to be produced before the Rent Controller, Chandigarh before the date to be fixed for examination of Sh. Umed Singh, Junior Engineer.

3. The respondent-tenant would be at liberty to file an additional affidavit by way of examination-in-chief in view of petitioner having been permitted to adduce evidence by way of examination of Sh. Umed Singh, Junior Engineer.

Failure of the petitioner to comply with either of the conditions No. (1) and (2) shall entail dismissal of the petition. However, nothing stated hereinbefore shall be construed as an expression of opinion on merits of the case.

Disposed of.

(Rekha Mittal)
Judge

1.6.2018
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No