

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

CR No.3615 of 2018 (O&M)

Decided on.05.07.2018.

Jagroop Singh

.....Petitioner

Versus

Gurpreet Singh and another

.....Respondents

CORAM : HON'BLE MRS. JUSTICE LISA GILL

Present: Mr.Raman Chawla, Advocate
for the petitioner.

LISA GILL, J. (Oral)

Petitioner is aggrieved of order dated 28.09.2016 (Annexure P-1), passed by learned Rent Controller, Ludhiana, whereby cross-examination of PW-3 and PW-4 have been concluded by treating opportunity of petitioner-respondent as nil. It is further prayed that order dated 20.01.2018 (Annexure P-5) and 27.03.2018 (Annexure P-8) passed by the learned Rent Controller be set aside as well.

Learned counsel for the petitioner vehemently argues that the petitioner-respondent was present before the learned Rent Controller, Ludhiana, on 28.09.2016 and he duly marked his presence at 09.40.a.m. At 12.45. noon, he deposited the cost of ₹400/-, as directed. However, it transpired that evidence of PW-3 and PW-4 had been closed while treating opportunity to the petitioner to cross-examine them as nil. Application (Annexuer P-4), was moved by the petitioner on 28.09.2016 itself seeking permission to cross-examine the said witnesses.

Learned counsel for the petitioner contends that this application was ultimately dismissed by the learned Rent Controller on 20.01.2018 (Annexure P-5) while recording that the petitioner's counsel did not come-forward to cross-examine both the witnesses after marking his presence in the morning. Thereafter, at 3.45.p.m., cross-examination of PW-3 and PW-4 was concluded while treating opportunity of respondent to cross-examine them as nil and the application (Annexure P-4) was moved only after the evidence was concluded. It is vehemently urged that the Presiding Officer was on half day casual leave on 28.09.2016, therefore there was no question of having concluded the evidence at 3.45.p.m. on 28.09.2016.

It is further submitted that irreparable loss and prejudice shall be caused to the petitioner, in case, an opportunity to cross-examine the said witnesses is not afforded to him and that too for no fault on his part. It is however, not denied that the examination-in-chief of PW-3 and PW-4 was recorded on 09.08.2016 and the matter was adjourned for about four occasions thereafter for cross-examination of the said witnesses. In this view of the matter, it is prayed that the petitioner be afforded one effective opportunity to cross-examine PW-3 and PW-4, who are material and relevant witnesses. PW-3-Surinder Singh is the father of both the respondents. Surinder Singh, was the original owner of the property in question and the property was transferred by him in favour of his sons, the respondents. PW-4, Gurpreet Singh, respondent no. 1 is the other witness to be cross-examined. It is thus prayed that this petition be allowed.

I have heard the learned counsel for the petitioner and have

gone through the file with his able assistance.

Photocopy of the record as well as report from the presiding officer was called for vide order dated 28.05.2018 passed in the present case. Learned trial Court was directed to adjourn the proceedings beyond the date fixed in this case. Report dated 14.06.2018 by learned Civil Judge (Jr. Division), Ludhiana, as well as the copy of the record has been received.

The matter is being disposed of without issuance of notice to the respondents, as at this stage, issuance of notice would unnecessarily delay the proceedings.

A perusal of the file reveals that petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949, was filed by the respondents seeking ejectment of the petitioner from the demised premises. Examination-in-chief of PW-3, the original landlord and father of respondents no.1 and 2 as well as PW-4 i.e. respondent no.1 was recorded on 09.08.2016. The matter was deferred on 19.08.2016 on request of learned counsel for the present petitioner and yet again to 30.08.2016, thereafter to 12.09.2016. The matter was then adjourned to 28.09.2016. Order dated 28.09.2016 reads as under:-

“Present: Sh. A.C.Gupta, Adv. for the petitioner.
Sh.P.S.Pal Adv. for respondent.

PW-3 and PW-4 present and examined.
Summons to the concerned PW and Bharat Airtel received back duly served but he has not come present. The concerned clerk of Bharat Airtel throughailable warrants in the sum of Rs. 5000/- with one surety in the like amount for 18.10.2016.

Varinder Kumar
JMIC/Ldh/28.09.2016.

Present: As above.

At this stage an application filed by the counsel for the defendant seeking opportunity to cross-examination of PW-3 and PW-4. Now reply to the said application be called for the date fixed.

Varinder Kumar
JMIC/Ldh/238.09.2016”

Evidence of PW-3 and PW-4 was concluded while treating opportunity of the respondent to cross-examine them as nil.

As per report dated 14.06.2018, it is affirmed that the Presiding Officer was on casual leave for the second half of the day on 28.09.2016. It is however sought to be explained by the officer that mention of the time of 3.45. p.m. of cross-examination of PW-3 and PW-4 in order dated 20.01.2018 is the result of a clerical mistake. It is not mentioned in order dated 28.09.2016 that cross-examination of PW-3 and PW-4 was concluded at 3.45.p.m.

Perusal of the photocopy of the record reveals that PW-3 and PW-4 were examined-in-chief on 09.08.2016. The matter was adjourned on various occasions for their cross-examination at request of learned counsel for the petitioner. Moving of the application (Annexure P-4) seeking an opportunity to cross-examine PW-3 and PW-4, is duly reflected in zimni order dated 28.09.2016.

Needless to say, PW-3 and PW-4 are the material witnesses. In case, the petitioner is not permitted to cross-examine the said witnesses, it shall clearly cause grave prejudice to the petitioner. It is thus considered just and expedient to afford one effective opportunity to the petitioner to cross-examine the said witnesses.

Therefore, while setting aside orders dated 28.09.2016,

20.01.2018 and 27.03.2018, this petition is disposed of with a direction to the learned Rent Controller, Ludhiana, to afford one effective opportunity to the petitioner to cross-examine PW-3 and PW-4. It is made clear that in case, the petitioner does not cross-examine the said witnesses, no further opportunity shall be afforded.

05.07.2018

S.khan

(LISA GILL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No