

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

CR No.402 of 2012 (O&M)
Date of decision : 03.10.2018

Ram Pal Sharma

...Petitioner

Versus

Rakesh Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.S. Mamli, Advocate for the petitioner.

Mr. G.C. Shahpuri, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

CM No.5103-CII of 2016

Prayer in the application is for fixing of the market rate of rent
i.e. mesne profits for the use and occupation of the demised premises with
effect from the date of eviction order i.e. 10.08.2010.

Application is dismissed as not pressed.

Main case

The tenant-petitioner is in the revision petition against the order
passed by the Rent Controller affirmed in appeal by the Appellate Authority.
The eviction has been ordered on the ground of bona fide requirement of the
landlord. The tenant, during the pendency of the proceedings before the
Rent Controller, brought on record, an order passed by the Rent Controller
and a copy of the compromise arrived at during the pendency of the appeal

with respect to adjoining premises, the eviction whereof was also sought on the same ground. The tenant had also disclosed to the Court that the aforesaid premises after getting the possession thereof has been sold by the landlord vide sale deed dated 04.06.2008.

During the pendency of the appeal, the tenant filed an application under Order 6 Rule 17 CPC so as to incorporate those pleadings. It was sought to be pleaded that the landlord has sold four shops. The Appellate Authority rejected the application on the ground that such facts were already in the knowledge of the tenant while filing the written statement. It may be noted that the tenant filed the written statement on 25.05.2007 whereas the sale deed of the adjoining shop is dated 04.06.2008. The deed of compromise in the previous petition with respect to the adjoining shop is dated 25.05.2008. In view of the aforesaid, it is apparent that the Appellate Authority dismissed the application on factually incorrect basis.

Learned counsel for the respondent submitted that the order passed by the Appellate Authority, dismissing the application under Order 6 Rule 17 CPC has not been challenged. It may be noted that as per Section 15 (6) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 while hearing the revision petition, High Court also has suo-moto power. Still further, all legality interim/interlocutory orders passed by the Courts can be examined by the Court while adjudicating upon the revision petition which has been filed against the final order. In view thereof, an application for amendment of the written statement is ought to have been allowed by the Appellate Authority.

Accordingly, the application for amendment is allowed. Case is remitted back to the Appellate Authority to re-decide the appeal after granting the opportunity to the parties to lead evidence, if they wish to produce any. The Appellate Authority would be at liberty to frame an additional issue with respect to plea which has been added by the amendment.

The judgment of the Appellate Authority is set aside.

Parties through their counsel are directed to appear before the Appellate Authority on 10.10.2018. The Appellate Authority shall make a sincere endeavour to decide the appeal within a period of six months.

In view of the above, the present revision petition is disposed of.

Record of the Courts below be immediately sent back.

All the pending miscellaneous applications, if any, are disposed of in view of the abovesaid judgment.

03.10.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No