

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

1. **Civil Revision No.5588 of 2017**
Date of Decision: 21.08.2018

Rakesh**Petitioner**
Vs
Mamta Garg and others**Respondents**

2. **Civil Revision No.5596 of 2017**

Rakesh**Petitioner**
Vs
Mamta Garg and others**Respondents**

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Gurpreet Singh Advocate
for the petitioner.

Mr. Vijay Kumar Jindal, Sr., Advocate with
Ms. Janya Sirohi, Advocate
for respondent No.3.

RAJ MOHAN SINGH, J.

[1]. Vide this common order Civil Revision Nos.5588 and 5596 of 2017 are being decided.

[2]. Petitioner has assailed the order dated 01.08.2014 passed by the Civil Judge (Jr. Divn.) Panipat vide which two applications were decided. Civil Revision No.5588 of 2017 has been preferred against the dismissal of application whereby permission to tender additional/ supplementary affidavit along with 'CD' was declined. Whereas, Civil Revision No.5596 of

2017 has been arisen qua the rejection of prayer made in the application for restoration of electricity connection.

[3]. Since common facts are involved in both the revision petitions, therefore, for brevity facts are being noticed from Civil Revision No.5588 of 2017.

[4]. Plaintiff/petitioner filed a suit for permanent injunction in respect of demised premises i.e. shop No.3 on the ground that he took the aforesaid shop on rent from the defendants @ Rs.20,000/- per month and was paying the rent regularly in advance through cash as well as cheques without any default. Defendants did not issue any receipt despite demand. Plaintiff was paying electricity bill and other charges directly to the Department as per actual consumption. Plaintiff was involved in the work of tailoring and the shop in question is being run under the name and style of R.K. Tailor, which is also registered with the Labour Department, Haryana. Defendants wanted to get the shop vacated and intended instances were quoted at the instance of the defendants which ultimately resulted in filing of the present suit.

[5]. The suit was contested by the defendants. Tenancy was denied, whereas the plaintiff being licensee was alleged. A counter-claim was set up by the defendants along with written statement to the effect that the plaintiff was a licensee and the

licence had already expired on 30.11.2015 and, therefore, the plaintiff lost his right to keep his articles in the shop. Mandatory-cum-permanent injunction was sought, directing the plaintiff to remove his articles from the shop and occupation charges @ Rs.50,000-/ per month were also claimed for use and occupation of the shop by the plaintiff.

[6]. After completion of the pleadings, the trial Court passed an order dated 02.05.2016 in the application under Order 39 Rules 1 and 2, whereby it was observed that at the stage of deciding the application for interim injunction, the Court is not required to look into the minute details, but has to satisfy itself in respect of existence of *prima facie* case. Plaintiff claimed himself to be a licensee under the defendants, but no documentary evidence has been produced to *prima facie* satisfy the Court that the demised property was leased out to him. The lease beyond 11 months has to be registered. The plea of tenancy cannot be answered at this stage and the pleadings of the plaintiff do not make out a strong *prima facie* case for grant of interim injunction. The prayer for interim injunction was declined, however since the defendants had admitted the possession of the plaintiff over the suit property and have also filed a counter-claim for mandatory injunction directing the plaintiff to vacate the suit property, therefore, the possession of

the plaintiff was admitted. The trial Court further observed that the defendants shall not take law in their hands and dispossess the plaintiff, except in due course of law.

[7]. Perusal of the order dated 02.05.2016 passed by the trial Court would show that at the one hand, the plea of tenancy at that stage was not *prima facie* favoured, but at the same time the possession of the plaintiff was acknowledged and it was observed that the defendants may take the possession in due course of law. The said order was upheld by the District Judge, Panipat vide order dated 10.07.2017.

[8]. Plaintiff while leading his evidence filed an additional affidavit in examination-in-Chief along with 'CD', highlighting that the rent was being paid through cheques drawn on Punjab National Bank, G.T., Road, Panipat from the account of plaintiff and the same was encashed by the defendants.

[9]. The application was opposed by the defendants on the ground that no such conversation dated 06.02.2016 has taken place between the parties. The 'CD', if any, was claimed to be doctored and manufactured.

[10]. Another application was filed for restoration of electricity connection in the demised shop.

[11]. Both the aforesaid applications were dismissed by the

trial Court vide impugned order on the ground that the interim prayer in terms of Order 39 Rules 1 and 2 CPC were declined by the Courts below after *prima facie* observing that the plaintiff is not a tenant under the defendants. The possession of the plaintiff was protected only on the plea of licensee for a certain period, but not under the plea of plaintiff being tenant under the defendants.

[12]. The trial Court further observed that the relation between the parties is the core issue involved in the case and at this stage no such additional affidavit can be allowed in examination-in-chief in respect of audio CD containing record of telephonic conversation allegedly taken between the plaintiff and defendants on 06.02.2016.

[13]. Learned counsel for the petitioner submitted that the aforesaid 'CD' was intended to be produced in the evidence with a view to establish the admission made by the defendants in respect of status of the plaintiff being that of tenant. The 'CD' could not be placed on record at the time of filing of the plaint and tendering of documents in the evidence at the stage of examination-in-chief. The 'CD' was sought to be tendered along with affidavit in examination-in-chief. Secondly, the provision for electricity connection during pendency of the suit is the basic necessity arising out of basic amenities in the shop. The factum

of status of plaintiff being tenant or licensee would be tested by the trial Court with reference to the evidence to be led by the parties at the relevant stage. Learned counsel further submitted that at this stage, since the evidence of the plaintiff is in offing, the filing of additional affidavit cannot be equated with additional evidence.

[14]. I have considered the submissions made by learned counsel for the parties.

[15]. Since the plaintiff is leading the evidence, therefore, the filing of additional affidavit in examination-in-chief will not prejudice the case of the defendants by any means as the defendants would be having due opportunity of cross-examination of the plaintiff. The filing of supplementary affidavit before commencement of cross-examination of the witness can be allowed as no prejudice would be caused to the defendants. The plea of admissibility of the document can be raised by the defendants in accordance with law at appropriate stage. The rights of the parties would be protected by way of observing necessary safeguards while allowing such prayer in examination-in-chief. The admissibility, authenticity and genuineness of the document would be tested by the trial Court at the relevant stage. If the admissibility of the document is found to be established by way of cogent evidence, the

document can be taken to be exhibited after proving its due execution. In case, the execution of the document cannot be proved, the same can be eschewed by the Court. At this stage, in my considered opinion, the prayer can be accepted as per decision in **Aman Goel vs. Chuni Lal and others, 2012 (2HLR) 2383.** The omission to tender the document at the relevant stage can be allowed subject to terms.

[16]. The objection raised by learned Senior counsel for respondent No.3 with reference to **Behram Tejani & Ors. vs. Azeem Jagani, 2017(1) R.C.R. (Civil) 723; Madhu Behal and another vs. Rishi Kumar and another, 2009(3) R.C.R. (Civil) 630; Hanuman Dutt Bajpai vs. Budha Singh, 1997(2) R.C.R (Rent) 593; Joseph Severance and others vs. Benny Mathew and others, 2005(4) R.C.R. (Civil) 559; Sita Devi and others vs. Sheela and others, 2015(58) R.C.R. (Civil) 499** and **Director Marketing Bharat Petroleum Corporation Limited and others vs. Vipin Sukhija, 2017(3) R.C.R. (Civil) 987** cannot be entertained as in the instant case, the controversy with regard to the plaintiff being tenant or licensee cannot be answered at this premature stage. The only thing that since the plaintiff can only be ejected in due course of law, therefore, opportunity to lead evidence to establish tenancy by the plaintiff is a lawful effort to prove his case for which

indulgence can be granted by the Court to provide adequate opportunity to the plaintiff to prove his case in accordance with law. Omission to file the 'CD' at the relevant stage would not give rise to any such adverse inference against the plaintiff so as to debar him from relying upon 'CD' by way of additional affidavit, however subject to proving lawful execution of the document.

[17]. The aforesaid precedents cited by learned Senior counsel for respondent No.3 have no application in the facts and circumstances of the case as the plea of tenancy or licensee would be considered by the trial Court at the relevant stage on the basis of evidence to be led by the parties. At this stage, an opportunity to lead/establish his case has to be accorded to the plaintiff. Filing of additional affidavit cannot be said to be an effort to bring additional evidence on record, rather the case is fixed for plaintiff's evidence where plaintiff has the right to lead his evidence to prove his case. The question whether plaintiff is tenant or licensee shall be gone into at the time of disposal of the suit when both the parties would produce necessary evidence in support of their respective claims.

[18]. At this stage, filing of additional affidavit in examination-in-chief along with 'CD' cannot be treated to be an act amounting to filling of lacuna as the evidence of the defendants

has not yet started. Defendants would be at liberty to cross-examine the plaintiff witnesses in rebuttal evidence of the plaintiff in accordance with law. The production of 'CD' itself will not prove the same to be validly executed document unless and until execution of the same is proved by the plaintiff as per provision of Evidence Act. If the execution of that document is proved in accordance with law, the same can be relied upon by the Court to be a validly executed document. However, if the execution of document is not proved, the same can be eschewed by the Court at a later stage. In view of above, the omission to file 'CD' along with original affidavit tendered in examination-in-chief can be allowed subject to terms.

[19]. The second prayer in respect of restoration of electricity connection cannot be declined. The provision of electricity is a basic necessity as the possession of the plaintiff is proved in the demised premises. Unless and until, the plaintiff is ejected in due course of law, the electricity connection cannot be disconnected by the landlord.

[20]. For the reasons recorded hereinabove, both the revision petitions are allowed. The impugned order dated 01.08.2014 passed by the Civil Judge (Jr. Divn.) Panipat is hereby set aside. Plaintiff would be entitled to production of additional affidavit along with 'CD' in examination-in-chief and

would lead evidence thereof in accordance with law. The said provision is however subject to payment of cost of Rs.10,000/- to be paid to the defendants. The second prayer for restoration of electricity connection in the demised premises is allowed. Defendants would facilitate restoration of electricity connection in the demised premises during pendency of the suit. Trial Court is directed to give effect to the present order by way of issuing appropriate directions.

[21]. Keeping in view the nature of controversy involved in the present cases, trial Court shall make every endeavor to decide the main suit at the earliest by giving short adjournments.

August 21, 2018

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No