

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

C.R No. 6680 of 2018(O&M)

Date of decision: 08.10.2018

Neena Kaushal

..... Petitioner

Versus

Kamal Kant

..... Respondent

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Harsh Goyal, Advocate
for the petitioner.

Mr. Akshit Aggarwal, Advocate
for Mr. S.K.Singla, Advocate
for the respondent.

LISA GILL, J(Oral).

Petitioner is aggrieved of order dated 06.08.2018 (Annexure P-3), vide which evidence of the petitioner was closed by order as well as order dated 14.08.2018 (Annexure P-5) passed by the learned Rent Controller, Malerkotla, whereby the petitioner's application for recalling order dated 06.08.2018 was dismissed.

Vide order dated 06.08.2018 (Annexure P-3), evidence of the petitioner was closed by order on the ground that despite availing thirty (30) opportunities to conclude his evidence, the applicant-petitioner had failed to do so.

Learned counsel for the petitioner submits that in-fact, after suffering a statement on 27.07.2018 that he would conclude his evidence on the next date of hearing, material witness-Amrik Singh, was present before the learned Rent Controller on 01.08.2018. Examination in chief of Amrik

Singh-AW-12, was conducted but his cross-examination was deferred to 06.08.2018 on request of learned counsel for the respondent. However, on 06.08.2018, AW-12-Amrik Singh, could not come present in Court due to pain caused by kidney stones. The petitioner had moved an application for adjournment of one date as the witness was suffering from stone pain, but the said application was declined and evidence of the petitioner was closed by order.

A photocopy of the prescription slip dated 06.08.2018 of Amrik Singh from Grewal Health Care Center, Sangrur, has been produced in Court today.

Learned counsel for the petitioner submits that AW-12-Amrik Singh, is a material witness to prove the tenancy of the respondent as well as rate of rent. Petitioner does not seek to examine any other witness. He further undertakes that the said witness shall be available for cross-examination, if one more opportunity is afforded. The petitioner can also be put to terms. It is submitted that moreover no prejudice whatsoever shall be caused to the respondent, who is a tenant in the demised premises and continues to be in possession of the demised premises. Irreparable and manifest injustice shall be caused to the petitioner, in case, he is not permitted to examine the said witness and the impugned orders are upheld.

Learned counsel for the respondent opposes the petition while submitting that the petitioner is merely delaying the process and deliberately did not make available AW-12-Amrik Singh for cross-examination on 06.08.2018.

Heard learned counsel for the parties.

Perusal of order dated 01.08.2018, passed by the learned Rent Controller, Malerkotla as reproduced in para no.5 of the petition reveals that the matter was indeed adjourned for cross-examination of AW-12-Amrik Singh on request of learned counsel for the respondent. There is nothing on record to rebut the stand of the petitioner that AW-12-Amrik Singh, could not appear in Court on 06.08.2018 due to pain caused by kidney stones. Petitioner has taken a specific stand that no other witness is to be examined by him.

Keeping in view the facts and circumstances of the case, it is considered just and expedient to afford one effective opportunity to the petitioner to examine AW-12-Amrik Singh. Accordingly, orders dated 01.08.2018 and 14.08.2018, passed by the learned Rent Controller, Malerkotla, are set aside subject to deposit of ₹15,000/- as costs to be deposited with the District Legal Service Authority, Sangrur. Learned Rent Controller shall afford one effective opportunity to the petitioner to examine AW-12-Amrik Singh as undertaken by the petitioner.

Petition is accordingly disposed of.

08.10.2018

s.khan

Whether speaking/reasoned : Yes/No

Whether reportable: Yes/No

[LISA GILL]
Judge