

In the High Court of Punjab and Haryana at Chandigarh

CR No. 806 of 2018

Date of Decision:8.2.2018

Brij Mohan

---Petitioner

vs.

Som Chand and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Abhinav Gupta, Advocate
for the petitioner

Rekha Mittal, J.

The present petition directs challenge against order dated 7.12.2017 (Annexure P-5) passed by the learned Rent Controller, Bathinda whereby application for recalling Som Chand and Raj Kumar for further cross examination has been dismissed.

Counsel for the petitioner has submitted that respondents have filed application under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (in short “the Act”) for eviction of the petitioner from shop situated on the ground floor, forming part of building bearing MC No. 4522 situated in Middu Mal Street, Bathinda, detailed in head note of the petition, on the ground of bona fide personal necessity of Raj Kumar applicant No. 2. Applicants Som Chand and Raj Kumar appeared in the witness box and were cross examined by counsel representing the petitioner before the Court below. The petitioner filed application (Annexure P3) for

recalling Som Chand and Raj Kumar for further cross examination in respect of certain facts averred in paras 2 to 7 of the application but the same has been dismissed by the Rent Controller without examining plea of the petitioner in right perspective that in case the petitioner is not permitted to further cross examine the applicants on vital aspects of the matter raised in the application, it would be of serious consequence and lead to miscarriage of justice. According to counsel, no prejudice shall be caused to the respondents in case they are recalled for further cross examination as they can well be compensated with costs for being recalled for cross examination as well delay likely to occur because of their recalling for further cross examination.

I have heard counsel for the petitioner, perused the paper book particularly the application (Annexure P3), reply thereto (Annexure P4) and the order impugned (Annexure P5).

Before adverting to the submissions made by counsel for the petitioner, it is appropriate to recapitulate that Order 18 Rule 17 of the Code of Civil Procedure (in short "CPC") enables the Court to recall any witness who has been examined and put such questions to him as it thinks fit. The power to recall any witness under Order 18 Rule 17 can be exercised by the Court either on its own motion or on an application filed by any of the parties to the suit requesting the Court to exercise such power. As per the settled position in law, power under Order 18 Rule 17 CPC is discretionary and should be used sparingly in appropriate cases to enable the Court to clarify any doubts it may have in regard to the evidence led by the parties. The said power is not intended to be used to fill up omissions in the

evidence of a witness who has already been examined. However, Hon'ble the Supreme Court in **K.K.Velusamy vs. N. Palanisamy 2011(2) RCR (Civil) 875** has held that if a party comes across some evidence which he could not lay his hands earlier or some evidence in regard to the conduct or action of the other party comes into existence, the Court may in exercise of its inherent power under Section 151 CPC permit the production of such evidence if it is relevant and necessary in the interest of justice, subject to such terms as the Court may deem fit to impose. However, the Court has added a word of caution by saying that power under Section 151 or Order 18 Rule 17 CPC is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice and the Court is satisfied that non-production earlier was for valid and sufficient reasons, the Court may exercise its discretion to recall the witnesses or permit the fresh evidence.

Reverting to the case at hand, the petitioner in paras 2 to 5 of the application has sought to recall the witnesses to raise an issue with regard to title of the respondents. Indisputably, the petitioner in reply to the application under Section 13 of the Act has not disputed relationship of tenant and landlord between the parties. There cannot be any dispute about the settled position in law that a tenant cannot raise the question of title of the landlord. This fact alone is sufficient to create a doubt qua bona fide of the petitioner for filing the application for recalling the witnesses.

The learned Rent Controller in the impugned order has noticed that Som Chand and Raj Kumar were examined in chief on 2.11.2015. Cross examination of Som Chand was conducted on four dates i.e. 6.2.2017, 6.3.2017, 16.3.2017 and 6.4.2017. Raj Kumar was called twice for completing his cross examination on 24.4.2017 and 4.5.2017 whereas the instant application appears to have been filed immediately thereafter.

Perusal of the application would reveal that no specific date of knowledge of the additional facts nor the source of information has been mentioned therein. In para 6 of the application, it is averred that the landlord sold away commercial property situated opposite /near Mittal Mall, Bathinda. In reply to this para, it is alleged that property sold by the respondents is not a commercial property but the same is a plot sold by Promik Bansal with consent of Ajay Bansal who are not parties in the present case. The petitioner has not described the nature and status of the property which is projected as a commercial property nor any particulars of sale have been mentioned in para 6. There is no challenge to the averments raised in reply to para 6, by the respondents. Similarly, the allegations in para 7 of the application are duly replied by the respondents and plea of the respondents in this regard has neither been challenged before the learned Rent Controller nor any prima evidence has been produced on record with regard to the respondents having shop in which they are doing business of sale of ghee, sugar etc. in whole sale in the name of M/s Kanshi Ram Som Chand, Grain Market, Bathinda. Under the circumstances, it can be safely concluded, as has been rightly held by the Rent Controller, that the present application is nothing but a clear attempt to delay culmination of eviction

proceedings which are pending for evidence of the petitioner (respondent therein) after the respondents/applicants have already concluded their evidence. The petitioner has miserably failed to make out a case for exercise of inherent jurisdiction under Section 151 CPC for recalling of the witnesses when otherwise the application does not fall within the purview and ambit of Order 18 Rule 17 CPC. In view of the above, I do not find an error much less illegality in the impugned order warranting intervention.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine. Nothing stated hereinbefore shall be construed as an expression of opinion on merits of the case nor would cause prejudice to the petitioner at the time of final disposal of eviction petition. No order as to costs.

(Rekha Mittal)
Judge

8.2.2018
paramjit

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