

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

Civil Revision No. 8199 of 2018 (O&M)

Date of decision : December 03, 2018

Subhash Jatwani

.....Petitioner

Versus

Santosh Kumar Banga

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Tanmoy Gupta, Advocate
for the petitioner.

LISA GILL, J.

The petitioner is aggrieved of order dated 17.11.2018 (Annexure P-5) passed by the learned Rent Controller, Hodal dismissing the application under Section 151 CPC filed by the petitioner for recalling PW2 i.e. respondent – Santosh Kumar for further cross examination.

Undisputed facts are that petition under Section 13 of Haryana Urban (Control of Rent and Eviction) Act, 1973 filed by the respondent – landlord was allowed on 28.03.2016. The present petitioner – tenant during pendency of the said rent petition filed an application for amendment of the written statement which was dismissed by the learned Rent Controller on 25.05.2015. This Court in Civil Revision No. 4077 of 2015, decided on 16.02.2016 (Annexure P-1) set aside order dated 25.05.2015 passed by the learned Rent Controller. The petitioner – tenant was permitted to amend the written statement and it was directed that the amended written statement be taken on record.

Rent petition filed by the respondent – landlord was subsequently allowed by the learned Rent Controller on 28.03.2016. Appeal preferred by the present petitioner was allowed by the learned appellate

Authority on 31.07.2018 (Annexure P-2). While setting aside judgment dated 28.03.2016, the matter was remanded to the learned Rent Controller to consider the matter afresh after taking into account the amended written statement filed by the present petitioner. Application (Annexure P-3) was thereafter moved by the present petitioner for recalling the respondent – landlord for further cross examination on the ground that it is necessary to cross examine PW2 on the points which have been raised in the amended written statement. This petition was dismissed by the learned Rent Controller vide impugned order dated 17.11.2018 on the ground that the petitioner before this Court in CR-4077-2015 had specifically undertaken that no further evidence would be led by him and moreover it was not revealed as to what are the material questions left out. Aggrieved therefrom, this petition has been filed.

Heard, learned counsel for the petitioner.

Learned counsel for the petitioner vehemently argues that the impugned order deserves to be set aside as an opportunity to cross examine the respondent – landlord subsequent to the amendment of the written statement should be permitted. It is not in dispute that this Court while deciding CR-4077-2015 has taken note of the arguments raised on behalf of the petitioner at that time that the amendment sought to be made is explanatory in nature and it does not alter the stand which has already been taken in the written statement filed earlier. Moreover, the petitioner's undertaking that he would not lead any further evidence was note of by this Court while allowing the amendment in the written statement. Eviction petition was thereafter decided by the learned Rent Controller on 28.03.2016. Admittedly, no such application for recall of PW2 Santosh

Kumar was moved by the petitioner at that time. Judgment dated 28.03.2016 was set aside and matter remanded by the learned appellate Authority for a decision afresh vide order dated 31.07.2018 (Annexure P-2).

Learned counsel for the petitioner points out that the amendment in the written statement pertained to the respondent – landlord receiving the properties of Rishi Ram in terms of judgment and decree dated 06.03.1997 passed by the learned Civil Judge (Junior Division), Palwal. Relevant amended facts are mentioned in para 10 of the amended written statement, which is attached as Annexure P-6 with this petition. Para 10 of the written statement reads as under:-

“ That the shop in question alongwith other adjoining properties were initially owned and possessed by Rishi Ram son of Sukh Dayal. Rishi Ram had four sons namely Data Ram, Yadav Rai, Khem Chand and Hem Raj. Data Ram is the father of the petitioner. The entire property of Rishi Ram is reflected in a site plan submitted by the husband of the petitioner in cases No. 114 of 20.01.1997 titled Raj Kumar and others versus Yadav Rai and others decided on 06.03.1997 by the court of Sh. Sanjeev Jindal, Civil Judge (Jr. Division), Palwal. By virtue of the above said case the above said properties of Rishi Ram were divided among his sons and grand sons. The petitioner has concealed this factum in the present petition. It is submitted that as per the said judgment and decree, the petitioner and his brother Raj Kumar were given three shops, chowk and a room. The three shops, chowk and a room allotted to the petitioner and his brother Raj Kumar are shown with the letters A B C D E F G H I J K in the site plan submitted by the petitioner in case No. 114 of 1997. the copy of the map and that of judgment and decree dated 06.03.1997. The copy of the map and that of judgment and decree dated 06.03.1997 are attached herewith. Therefore, the petitioner is in possession of several other shops in the same vicinity but has concealed the

same intentionally and deliberately in the present petition and as such there is no bonafide element of need with the petitioner and it is just lust or desire on the part of the petitioner to get the shop in question vacated from the respondent.”

Learned counsel for the petitioner on the asking of the Court has read out the cross examination of the respondent which was conducted prior to the amendment of the written statement.

Learned counsel for the petitioner is unable to deny that the said witness has been confronted with the judgment and decree dated 06.03.1997. Site plan as mentioned in the amended written statement has also been put to the said witnesses. Learned counsel is unable to point out material questions which the petitioner still seeks to put to the witnesses after recalling him for further cross examination.

No other argument has been raised.

Learned counsel for the petitioner is unable to point out any illegality and infirmity in the impugned order 17.11.2018 (Annexure P-5) passed by the learned Rent Controller, Hodal which calls for any interference in exercise of revisional jurisdiction by this Court.

Present petition is, accordingly, dismissed.

December 03, 2018
rts

(Lisa Gill)
Judge

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