

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

C.R No.1009 of 2018(O&M)

Date of decision : 09.01.2019

Monika Saini

..... Petitioner

Versus

Mukhtiar Chand and another

..... Respondents

CORAM : HON'BLE MRS. JUSTICE LISA GILL

Present: Mr.B.D.Sharma, Advocate
for the petitioner.

Mr. H.K.Aurora, Advocate
for the respondents.

LISA GILL,J

Petitioner is aggrieved of order dated 03.02.2018 (Annexure P-4), passed by learned Rent Controller, NRI Court, Jalandhar, whereby her application to produce on record certified copy of jamabandies for the year 2004-05 and 2009-10 of the property in question and to examine R.K.Verma, Architect, in order to prove the site plan by way of additional evidence, has been dismissed.

Petitioner filed a petition under Section 13-B of the East Punjab Urban Rent Restriction Act (for short 'Act'), for eviction of the tenant-respondent no.1 from the shop in question.

Respondent no.1-tenant filed an application for grant of leave to contest the ejectment petition, which was allowed and the written statement was filed by the tenant-respondent no.1 on 06.12.2011.

Rejoinder was filed by the petitioner on 23.02.2012 and issues were framed on the same date. Thereafter, the case was fixed for

evidence.

Evidence was led by the petitioner. She herself testified as PW-1. Petitioner's sister appeared as PW-2 and one Balwinder Kumar as PW-3. Petitioner closed her evidence in affirmative on 04.11.2015. Cross-examination of RW-1-respondent-tenant was conducted on 25.02.2016.

An application dated 30.07.2016 (Annexure P-1) was filed by the petitioner to produce the jamabandies as mentioned above and for examining R.K.Verma, Architect. It was stated that due to oversight /inadvertence, the said documents could not be produced earlier while leading the evidence in affirmative.

Reply to the application (Annexure P-2) was filed by tenant-respondent no.1. While application dated 30.07.2016 (Annexure P-1) was pending, Punjab Rent Act, 1995, came into force. An application was moved by the petitioner for amendment of the ejectment petition so as to convert it to one under Section 24 of the Punjab Rent Act, 1995. The application for amendment of the petition was allowed on 01.08.2017. Additional issues were framed on 04.12.2017. Application dated 30.07.2016, however remained pending. Due to oversight/inadvertent mistake, it is submitted that parties suffered a statement to the effect that evidence already led by them is sufficient and they do not intend to lead any further evidence. Case was accordingly fixed for arguments.

However, when pendency of the application dated 30.07.2016 came to light, an application was moved by the petitioner before the learned Rent Controller for disposing of the said application.

Learned Rent Controller vide order dated 03.02.2018 (Anexure P-3) disposed of the said application observing that application dated 30.07.2016 is indeed still pending and has to be disposed of. Accordingly, arguments on the application dated 30.07.2016 were advanced and the said application was dismissed on the same date vide impugned order dated 03.02.2018 (Annexure P-4).

Learned counsel for the petitioner vehemently argues that it is due to inadvertence and oversight that application dated 30.07.2016 remained pending. Learned Rent Controller, it is submitted has dismissed the petitioner's application merely on the ground that there is no provision in law for producing any additional evidence and that the petitioner availed sufficient opportunities and the case remained pending for a period of two years after the closure of evidence. Learned counsel for the petitioner thus submits that in the facts and circumstances of the case, present revision petition should be allowed and the petitioner be permitted to lead the evidence as prayed for.

Learned counsel for the respondent, on the other hand submits that there is indeed no provision for leading of additional evidence. Present, is not a case where the petitioner was not aware of the jamabandies. Due diligence was not exercised by the petitioner. Therefore, impugned order dated 03.02.2018 (Anneuxre P-4) be upheld and this revision petition be dismissed.

Heard learned counsel for the parties.

The factual position regarding filing of the petition under Section 13-B of the Act and subsequent amendment of the petition for

converting it into one under Section 24 of the Punjab Rent Act 1995, is not in dispute. It is further not disputed that amendment of the ejectment petition was allowed on 01.08.2017 and additional issues framed on 04.12.2017. Application dated 30.07.2016, evidently remained pending. Application for deciding the same was moved when the same was noticed by the petitioner.

In this view of the matter, it cannot be said that the matter remained pending for two (02) years after closure of the evidence of the petitioner and no action was taken by her. Petitioner seeks to place on record the copy of the jamabandies which are *per se* admissible and to examine an expert to prove the site plan which is already on the file of the case. Petitioner wishes to produce jamabandies to prove her title over the demised premises and the site plan to prove the identity of the said premises. It has been held by the Hon'ble Supreme Court in **K.K.Velusamy Vs. N.Palanisamy 2011(02) R.C.R (Civil) 875** that the need for the Court to act in a manner to achieve the ends of justice (subject to the need to comply with the law), does not end when arguments are heard. The Court is well within its rights to exercise its inherent power under Section 151 CPC to permit the production of such evidence, if it is relevant and necessary in the interest of justice subject to such terms as may be found fit to be imposed. Deletion of the provision under Order 18 Rule 17-A CPC, it was concluded did not mean that no evidence can be received at all after a party closes its evidence. In the present case, there is nothing on record to indicate that the petitioner-landlord has made any deliberate attempt to delay the proceedings.

Moreover, the petitioner does not gain anything by delay in the proceedings, as she is admittedly the landlady seeking eviction of the tenant from the demised premises.

Keeping in view the facts and circumstances of the case, it is considered appropriate to afford an opportunity to the petitioner to produce the said jamabandies for the year 2004-05 and 2009-10 and to examine R.K.Verna, Architect, in order to prove the site plan already available on the judicial file. Accordingly, impugned order dated 03.02.2018 (Annexure P-4) is set aside. Learned Rent Controller, NRI Court, Jalandhar, shall afford one effective opportunity to the petitioner to produce the said jamabandies and examine the witness as mentioned above, subject to deposit of ₹5000/- as costs, to be paid to the respondent. Needless to say, the respondent's right to cross-examination etc., shall be maintained.

January 09,2019

s.khan

**(LISA GILL)
JUDGE**

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No