

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Civil Revision No. 1468 of 2017(O&M)

Date of Decision: April 01 , 2019.

Ashok Kumar and others

..... PETITIONER (s)

Versus

Raj Kumar

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Ajay Jain, Advocate
for the petitioners.

None for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

This petition has been filed by the petitioners-landlords being aggrieved of order dated 16.02.2017 passed by the learned Rent Controller, Rewari whereby their application for leading additional evidence, has been dismissed.

Brief facts necessary for adjudication of this case are that, a petition under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 was filed by the present petitioners seeking eviction of the respondent-tenant

from the demised premises. It was pleaded that the demised premises in this case were required for settling Gautam Arneja son of petitioner No.1-Ashok Kumar. Evidence of the petitioners was closed on 03.08.2016 and that of the respondent on 06.01.2017. Present application (Annexure P1) was filed on 31.01.2017 with the averments that subsequently some other property has been purchased and as per the Memorandum of Settlement between the petitioners, it was agreed that the property subsequently purchased would be used for settling Jatin Arneja son of petitioner No.2-Krishan Lal. Learned Rent Controller however dismissed the application while observing that the evidence sought to be led by the petitioners are beyond pleadings as the petitioners seek to lead additional evidence in respect of necessity of one Jatin Arneja. Aggrieved therefrom, the present revision petition has been filed.

Notice of motion was issued in this case by this Court on 01.03.2017 and the following order was passed:-

“Inter alia submits that the application for additional evidence (Annexure P-1) has been filed to bring on record that shop Nos. 2076/2077 has been purchased by the landlord and his family members on 03.10.2016. It has been averred that as per the oral family settlement dated 23.10.2016 which was later reduced into writing on 30.10.2016 Jatin Arneja @ Kalu son of Krishan Lal, petitioner No.2 was to be settled in the said shop. The said event was sought to be brought on record in view of the fact that the eviction is sought from the premises on the ground of bonafide requirement of Gautam Arneja son of petitioner No.1-Ashok Kumar. The respondent-tenant had taken various objections regarding ownership of other properties and certain other material had come on record in the cross-examination and to dispel the said impression, the said

additional evidence would be necessary.

However, while deciding the application, the Rent Controller had misconstrued the contents of the application and held it as if the petitioner wanted to change the pleadings to the extent that the requirement is for Jatin Arneja @ Kalu and dismissed the application for additional evidence on that ground. It is thus submitted that there is non-application of mind and the present order is not justifiable.

Notice of motion to the respondents be issued for 03.05.2017.

Process dasti as well.

In the meantime, the Rent Controller shall not pass the final order.

Copy of the order be given under the signature of the Bench Secretary.”

Despite service, none appeared on behalf of the respondent-tenant and it is so recorded in order dated 31.10.2017. None had appeared on behalf of the respondent on the last date of hearing. Today again, there is no representation on behalf of the respondent. I do not deem it appropriate to adjourn the matter to further await presence of the respondent in such a situation where the Rent Controller was directed not to pass the final order way back in March, 2017.

I have heard learned counsel for the petitioners and have gone through the file.

It is contended that the learned Rent Controller has fallen in grave error while passing impugned order dated 16.02.2017. It is specifically and categorically submitted by learned counsel for the petitioners that only endeavour of the petitioners is to bring on record the subsequent events. The demised premises which are the subject matter of the proceedings are required for the

personal bonafide necessity i.e., for Gautam Arneja son of petitioner No.1-Ashok Kumar and not for Jatin Arneja. The application was filed only by way of abundant caution to dispel any impression of any type of concealment etc. by the petitioners. It is thus prayed that this petition be allowed.

It is apparent that the petitioners seek to lead additional evidence in respect to property purchased subsequent to closure of their evidence. It is specifically mentioned in the application (Annexure P1) that the property subsequently purchased would be utilized to settle Jatin @ Kalu son of petitioner No.2-Krishan Lal. Therefore, the learned Rent Controller has clearly erred while observing that the petitioners want to lead additional evidence in respect of necessity of one Jatin Arneja and that this evidence is beyond pleadings. The basis or foundation of the petition is not sought to be changed or varied by the petitioners. They merely seek to bring on record subsequent events.

Keeping in view the facts and circumstances as above, this petition is allowed. Order dated 16.02.2017 passed by the learned Rent Controller, Rewari is accordingly set aside. One effective opportunity be afforded to the petitioners to examine Jatin Arneja and produce the memorandum of family settlement dated 30.10.2016. Needless to say, due opportunity to cross-examine the said witness shall be afforded to the respondent in accordance with law.

April 01 , 2019.
'om'

(LISA GILL)
JUDGE

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