

CR- 1880 of 2016(O&M)

PARAMJIT KAUR SAINI
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In the High Court of Punjab and Haryana at Chandigarh

CR- 1880 of 2016(O&M)
Date of Decision:23.1.2019

Gurmeet Singh

---Petitioner

vs.

Shiv Raj Sablok

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. RPS Ahluwalia, Advocate
for the petitioner
Mr. D.S.Matya, Advocate
for the respondent

Rekha Mittal, J.

Challenge in the present petition has been directed against order dated 8.2.2016 passed by the Rent Controller, Ambala whereby application for permission to lead secondary evidence to prove the rent note dated 19.6.2013 filed by the petitioner-tenant, has been dismissed.

Counsel for the petitioner has submitted that a specific plea was raised in the written statement that the respondent received rent of Rs. 56,000/- against receipt and represented that thereafter rent is to be paid to his mother Motiawanti, owner of the demised premises. It was also specifically pleaded that there was rent agreement executed between Motiawanti and the petitioner on 19.6.2013. The Rent Controller dismissed the application for the reason, alien to pleadings of the parties and by holding at interim stage that alleged rent agreement is shrouded by suspicious circumstances. It is vehemently argued that at the stage of

adducing evidence, the Rent Controller is not expected to comment upon evidential value of the document nor can reject application to prove the rent agreement by way of secondary evidence on this premise.

Counsel for the respondent has supported the impugned order with the submission that though the petitioner in the written statement had pleaded rent agreement dated 19.6.2013 but there is no such plea raised that the original thereof is in possession of Motiawanti, mother of the respondent. The said plea was raised for the first time in the reply to the application filed by the respondent for production of documents and the same is the result of an after thought.

I have heard counsel for the parties, perused the paper book particularly the order impugned and various annexures appended with the petition.

Before advertng to the submissions made by counsel for the parties, it is pertinent to note that earlier Smt. Motiawanti initiated eviction proceedings against the petitioner wherein the petitioner raised a specific plea that tenancy was created by the respondent and there exists no relationship of landlord-tenant between the parties. The Rent Controller rejected plea of the petitioner but order dated 5.5.2010 passed by the Rent Controller in those proceedings was set aside by the Appellate Authority, Ambala and plea of the petitioner was accepted that Motiawanti is not the landlord but landlord is Shiv Raj Sablok (respondent herein), son of Motiawanti.

There is no denial that in reply to the eviction application filed by the respondent, a specific plea was raised that rent agreement was

executed between the petitioner and Motiawanti on 19.6.2013 and a copy thereof was appended with the reply. In response to the application for production of documents filed by the respondent, it was categorically pleaded that original rent agreement was retained by Motiawanti and a copy thereof was given to the petitioner. The respondent did not get the application for production of documents decided but withdrew the same. Motiawanti appeared in the witness box and altogether denied rent agreement dated 19.6.2013. As Motiawanti denied execution of rent agreement, filing of application by the petitioner by invoking Section 66 of the Evidence Act calling upon Motiawanti to produce the original rent agreement would have been exercise in futility.

The Rent Controller dismissed the application for the reasons assigned in para 6 of the impugned order. It has been held that loss of agreement dated 19.6.2013 is not proved on record and there are suspicious circumstances that shrouds execution of alleged rent agreement. It is none of the plea of the petitioner that the original agreement has been lost, therefore, findings of the Rent Controller that loss of agreement is not proved are the result of non-application of mind and failure to appreciate the controversy in right perspective.

The second observation made by the Rent Controller that execution of Rent Agreement is shrouded by suspicious circumstances cannot be a ground at this stage to deny an opportunity to the petitioner to prove his case and the document in question. The evidential value of the document would be considered by the Rent Controller at an appropriate stage of the proceedings, if the petitioner is otherwise successful to prove

existence of the original and possession thereof with Motiawanti and photocopy having been prepared from the original. In this view of the matter, the aforesaid two reasons recorded by the Rent Controller to reject application for secondary evidence cannot stand the test of judicial scrutiny. That being so, the order impugned suffers from grave error rather illegality, thus, cannot be allowed to sustain.

In view of what has been discussed hereinbefore, the petition is allowed. The impugned order is set aside. The application filed by the petitioner for proving rent agreement dated 19.6.2013 by way of secondary evidence is allowed, subject, however, to the conditions that the petitioner shall be obligated to prove existence of original and its possession with Smt. Motiawanti. It is clarified that evidential value of the document would be appreciated by the Rent Controller at the time of final adjudication. However, nothing stated hereinbefore shall be construed as an expression of opinion qua relevance, admissibility and evidential value of the rent note dated 19.6.2013.

(Rekha Mittal)
Judge

23.1.2019
paramjit

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