

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

**CR No.2374 of 2018 (O&M)
Date of Decision : 23.07.2019**

M/s D. Ram & Company and another

.....Petitioners

Versus

Dayanand Medical College & Hospital Managing Society (Regd.) and
another

.....Respondents

CORAM : HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present : Mr. Namit Gautam, Advocate
for the Petitioners.

Mr. B.B.S. Sobti, Advocate
for respondent No.1.

SUDIP AHLUWALIA, J. (ORAL)

This Revision Petition is directed against the order passed by the Ld. Rent Controller, Ludhiana on 20th December, 2017. Three applications of the present Petitioners/Tenants were dismissed vide the said order.

2. The Petitioners are, however, aggrieved specifically with dismissal of their second Application under Order 18 Rule 17 read with Section 151 of the Civil Procedure Code, in which a prayer had been made to recall RW-1 Raman Kumar for his further Examination-in-Chief.

3. The justification behind seeking such recall was that after

recasting of the original Issues on 20th January, 2017 when certain additional Issues (Nos.4 and 5) were added, the burden of proving those Issues had been cast upon the Petitioners/Respondents in the pending Trial Court proceedings, and for that purpose recall of their first Witness Raman Kumar was required.

4. The Ld. Court below nevertheless dismissed that application, after observing *inter alia* :-

*“It is not disputed that evidence of RW1 was already recorded before framing the additional issues No.4 & 5 onus of which was placed upon respondents. No doubt any party has right to lead evidence if some additional issues were framed lateron but facts & circumstances of present petition are quite different. Perusal of the examination-in-chief of RW1 shows that he has specifically pleaded in detail regarding malafide nature of present petition as well as admissibility of rent note between the parties in his examination-in-chief. Even otherwise, evidence of respondent is still open and petition is fixed for respondent evidence for the last more than two years. The present application has been moved under order 18 Rule 17 CPC. Our Hon'ble Punjab & Haryana High Court in case titled as **“Surinder Kaur vs. Karanbir Singh” reported in 2004 (3) RCR (Civil) Page 161** has clearly held that provisions contains in order 18 Rule 17 CPC is merely an enabling provision for convenience of the court and not for the parties to re-examine any witness to fill the lacunae in the case. In view of my above discussion as*

well as law cited above, the application u/o 18 rule 17 CPC moved by respondents have no force and same is dismissed. Now RW2 be produced on 10.01.18 to face his cross-examination. Remaining respondent evidence be produced on date fixed.”

5. The prayer of the Petitioners has been opposed by the Respondent/Landlord and submission of its Ld. Counsel is that such prayer is a palpably dilatory tactic considering the entire background of the case. The Eviction Petition was filed on 19th May, 2014. Issues were framed thereafter on 23rd July of that year. The Petitioner-Landlord's evidence was closed on 12th March, 2015 and the matter then posted for Respondents/Tenants' evidence with effect from 23rd March, 2015, during the course of such evidence any number of applications were filed on behalf of the present Petitioners/Tenants. Additional Issues were framed as a result of one of such applications.

6. The RW-1, who is now sought to be recalled, was originally examined on 22nd April, 2015 and his cross-examination was completed on 29th May thereafter. Subsequently, the Petitioners' side tendered the Affidavit of Ramesh Kumar, Partner in the Petitioner No.1-Company on 29th January, 2018 but ultimately gave up the said witness exactly nine months later when the time came for his actual examination in Court. In the meantime, on 7th April, 2017, the Petitioners' side had filed an Application for recalling the Landlord's

witness AW-2, which was dismissed and thereafter CR No.4189 of 2017 was filed against such dismissal and the said Revision itself was dismissed on 15th November, 2017.

7. It now transpires that the original Reply/Written Statement on behalf of the Petitioners/Tenants was filed jointly by both its Partners, the evidence of one of whom was subsequently given up after delaying the matter for nine months.

8. Now even assuming that burden of proof *qua* the additional Issues No.4 and 5 has been cast upon the Petitioners/ Tenants, still this Court finds no justification to recall AW-1 for further Examination-in-Chief. This would become clear on seeing the contents of the actual additional Issues No.4 and 5 framed by the Ld. Rent Controller, which are set out as below :-

“4. *Whether the petition is mala fide? OPR*

5. *Whether the rent note cannot be read and same is inadmissible? OPR.”*

9. As can be seen in respect of Issue No.5, it is essentially an Issue of a legal nature on the question whether or not a document (i.e. Rent Note) is admissible in evidence. No factual angle is involved to this Issue which would warrant any oral evidence to that effect to prove the same. Regarding Issue No.4, in which the Petitioners/Respondents are required to prove the original Eviction Application being *mala fide*, i.e. for any extraneous or ulterior motives. It may be observed that this

Issue has been framed actually on the basis of the original pleadings of the parties, and so the reasons or alleged oblique motives ought to have been known to the Petitioners' principal witness even at the stage of his initial examination. It is not clear whether any evidence to that effect to support this issue was given by him in his deposition, but the fact remains that no evidence can be given unless the details of the ulterior or oblique motives, behind filing the Eviction Application, are first disclosed in the pleadings. There is as such no scope at all for the Petitioners to lead any additional evidence in support of Issue No.4 which would be otherwise beyond its original pleadings.

10. It is submitted by Ld. Counsel for the Respondents that the next date fixed before the Ld. Rent Controller happens to be tomorrow itself for cross-examination of the last witness from the Petitioners' side. It may be mentioned that after examination of the original AW-1, no less than three employees from the Petitioners' side were examined in evidence and the witness, who is to be cross-examined tomorrow, is also one of those employees.

11. Considering all the observations recorded above, this is certainly not a fit case to interfere with the impugned order.

12. The Revision is, therefore, dismissed with a further direction upon the Ld. Trial Court to complete the cross-examination of the Petitioners' remaining witness tomorrow itself and in case the said

witness is not produced before the Court, the closing of the applicant's evidence forthwith may be considered.

13. The Ld. Rent Controller is further requested to endeavour to complete the trial as expeditiously as possible, and preferably within two months from the date of communication of this order.

July 23, 2019

Dpr

**(SUDIP AHLUWALIA)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No