

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

CR No.3571 of 2015 (O&M)

Date of Decision : 01.11.2019

Rajiv Kumar

..... Petitioner

Versus

Anita Kumari

..... Respondent

CORAM : HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Divanshu Jain, Advocate
for the petitioner.

Mr. Jaideep Verma, Advocate
for the respondent.

SUDIP AHLUWALIA, J. (ORAL)

This revision is directed against the impugned Judgment dated 26.02.2015 passed by the Ld. Appellate Authority, Rupnagar, apart from a separate order of the same date (Annexure P-12). Vide the order Annexure P-12, the petitioner's application for permission to lead additional evidence under Order 41 Rule 27 read with Section 151 of CPC was dismissed by the Ld. Appellate Authority, which was of the view that sufficient opportunities to lead evidence have been granted to the petitioner-applicant, and also no solid reason had been given in the application for not producing the proposed evidence earlier.

2. The Ld. Appellate Authority had also taken notice of the contention of the respondent-landlady that the petitioner-applicant had availed number of opportunities and the eviction application had in this manner been delayed for the period of more than 10 years between 21.08.2003 and 11.07.2014.

3. It is highlighted on behalf of Ld. Counsel for the petitioner that during the pendency of the eviction application, the same was at one stage, dismissed in default on 15.02.2008 and was subsequently restored on 04.06.2012, i.e., after more than 4½ years, while the application for restoration was itself filed after a delay exceeding 4 years. As such, it cannot be said that delay occasioned was entirely attributable to the petitioner-tenant.

4. Regarding the observation of the Ld. Appellate Authority that there was no “solid reason” for not producing the evidence earlier, attention of this Court has been drawn to the averment of the petitioner in Para No.4 of his application under Order 41 Rule 27 read with Section 151 of CPC (Annexure P-10) that need for recourse to such additional evidence was only to prove that the respondent-landlady was one and the same person, who had apparently intentionally sought to hide her identity by not disclosing the name of her husband, while purchasing an alternative property being shop/booth No.18 at Bela Chowk, Rupnagar, and that both the Ld. Courts below had in a callous manner dismissed the eviction petition by holding that it could not be said that the applicant-Anita Kumari, daughter of Punjab Singh was necessarily also the same Anita Kumari, wife of deceased Mast Ram.

5. It is also noteworthy that while dismissing the application Order 41 Rule 27 read with Section 151 of CPC, no opportunity was granted to the petitioner to challenge the same since the final judgment by the Ld. Appellate Authority was itself passed on the very same date.

6. In the opinion of this Court, the approach adopted by the Ld.

Appellate Authority has led to a serious miscarriage of justice. This appears to be a case in which visibly false statements made by the original respondent-landlady, regarding her alleged ownership of booth No.18, as already referred to, have been permitted to be brushed under the carpet by denying a fair opportunity to the petitioner-tenant, when it is undisputed that an Appeal is regarded as only a continuation of the original Trial proceedings.

7. For the aforesaid reasons, the revision petition is allowed and the matter is now remanded back to the Ld. Appellate Authority with a direction to not only allow the petitioner to lead additional evidence in respect of the documents, he intended to lead into evidence vide application (Annexure P-10), but he shall also be at liberty to have the relevant records to be summoned from the Local Improvement Trust, Rupnagar, for which purpose, one additional effective date, if required, may be granted to him. Needless to add, the respondent-landlady would be entitled to lead any additional evidence in rebuttal from her side, if so warranted.

8. Parties are directed to appear before the Ld. Appellate Authority on 20.11.2019.

9. The Ld. Appellate Authority is further requested to endeavour to dispose off the matter finally as expeditiously as possible and preferably within a period of four months from the date of appearance fixed before it.

November 01, 2019

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**(SUDIP AHLUWALIA)
JUDGE**

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