

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

**Civil Revision No. 5545 of 2015 (O&M)
Date of decision: 02.05.2019**

Shakuntla Sayal and others

...Petitioners

Versus

Dinesh Rai Mangla @ Dhanwant Rai (since deceased) through LRs

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr.Rohan Sharma, Advocate,
for the petitioners.

None for the respondent.

JAISHREE THAKUR, J.

1. This revision has been filed under Article 227 of the Constitution of India with a prayer for setting aside the order dated 07.08.2015 passed by the Rent Controller, Patiala, whereby the application filed by the respondent (landlord) for permission to lead secondary evidence has been allowed.

2. In brief, facts are that the respondent herein filed a petition under Section 13 of the East Punjab Urban Rent (Restrictions) Act, 1949 (hereinafter referred to as 'Rent Act, 1949') for ejectment of the petitioners from shop Nos. 1 & 2, Arna Barna

Bazar, Patiala on the ground of personal necessity. It was *inter alia* contended that the applicants-respondent herein was running the business of printing press i.e Phulkian press in the same premises as where the tenants were situated, and wanted to expand his business by merging the space in occupation with the tenant. On notice, the petitioners herein appeared and filed written statement by taking the stand that there is no personal necessity of the respondent as the respondent has many other commercial properties which are lying vacant. In the replication, all the averments of the petitioners in the written statement were denied. Both the parties led their respective evidence and their evidence was closed by order of the Court.

3. It appears that during the course of arguments, counsel for the petitioners herein, namely the tenants, argued that Phulkian press had taken on lease the firm M/s Tej Sons and was paying ₹ 80,000/ per annum as lease money and, therefore, had sufficient accommodation with them. It was argued that the firm M/s Tej Sons was also being run in the same premises which was sought to be got vacated by Sh. Dinesh Roy Mangla (since deceased) and, therefore, the landlord had sufficient accommodation with him. The landlord-respondent thereafter filed an application under Section 151 CPC for producing additional evidence in order to produce and prove the registered sale deed dated 29.06.1988 along with the site plan executed by Jaggar Ram son of Walaiti Ram of Patiala in favour of

M/s Tej Sons Patiala to show and establish that the premises of the firm M/s Tej Sons, Patiala in which Veena Roy Mangla and Rajshree Mangla are the only partners, have nothing to do with the shops in dispute being independent property. It was further alleged that in the written statement, no plea regarding the firm M/s Tej Sons had been taken and it was for the first time that this fact was brought up in the cross-examination of Mohit Roy Mangla. It was further alleged that the property was taken on lease by M/s Phulkian Press Limited from the said Firm M/s Tej Sons Patiala is separate property from that of the property owned by Dinesh Roy Mangla of which the shops in dispute form part.

4. The application filed for additional evidence was contested by the petitioners herein on the ground that the application was not maintainable and has been filed with a *mala fide* intention to prolong the case. It was alleged that documents were well within the knowledge of the petitioners and during the arguments, the present application was filed. It was further alleged that original sale deed has no relevancy and the same has no bearing upon the case. Rest of the facts as alleged by the petitioners were denied and dismissal of the application was prayed for. The Rent Controller, as already noticed, allowed the application, giving rise to the instant revision.

5. I have heard learned counsel for the petitioners and have also perused the pleadings of the case.

6. Admittedly, an ejectment petition was filed by Dinesh Rai Mangla (since deceased) seeking eviction of the tenant on the ground of personal necessity and on the ground that the premises were required for the expansion of business. After evidence had been led by both the parties, and during the course of arguments, the petitioners herein took up a plea that the respondent landlord was in possession of sufficient accommodation, since the firm Phulkian Press Limited had already taken on lease premises from the Firm M/s Tej Sons Patiala and was paying lease money to it. To controvert this allegation which was taken up for the first time in cross examination, the respondent landlord filed an application for additional evidence to prove on record the sale deed in favour of M/s Tej Sons Patiala which would reflect that the said property had nothing to do with Dinesh Rai Mangla and was owned by its separate individuals. The application was allowed by the Rent Controller on the ground that the said evidence was required for the proper adjudication of the controversy between the parties.

7. Learned counsel appearing on behalf of the petitioners tenant argues that the Rent Controller has erred in allowing the application filed for additional evidence as the applicant has failed to prove that the evidence sought to be placed on the record could not be so placed despite due diligence. It is argued that even though there is no strict application of the provisions of the Code of Civil Procedure

in proceedings pending before the Rent Controller, however, guidance is to be taken from the provisions as specified under Order 41 Rule 27 CPC. It is argued that in the present case, there is only one bald assertion in the application that the evidence could not be placed on record, which does not satisfy the ingredients as specified under Order 41 Rule 27, which stipulates that a person has to prove that despite due diligence, the evidence could not be produced on the record at the relevant time.

8. Respondent herein seeks eviction of the petitioners on the ground of personal necessity i.e for expansion of his business. Written statement was filed by the petitioners which is fairly detailed, stating that Phulkian Press is already running in a big space having sufficient accommodation for running its business. In the written statement there is no mention that the landlord-respondent is in possession of premises leased from M/S Tej Sons and this argument was introduced in cross-examination of AW-2. The petitioner-tenant seeks to raise an argument that landlord is in possession of sufficient accommodation which is sought to be controverted by leading evidence. The evidence sought to be produced goes to the root of the question as to whether the landlord is in occupation of sufficient accommodation. The argument that the respondent has not been able to prove due diligence would not be sustainable since it is the petitioners who raised the argument about M/s Tej sons and that too

in the cross-examination.

9. Finding no error in the order passed by the Rent Controller, this revision petition is dismissed.

02.05.2019

(JAISHREE THAKUR)

Satyawan

JUDGE

Whether speaking/reasoned

Yes/No.

Whether reportable

Yes/No.