

249 **IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CR No.5298 of 2018

Date of Decision: January 15, 2019

M/s Punjab Alkalies and Chemicals Limited

..... Petitioner

Versus

M/s Ram Bhawan Estates Private Limited

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Paras Money Goyal, Advocate
 for the petitioner.

 Mr. Kunal Mulwani, Advocate
 for the respondent.

SUDIP AHLUWALIA J. (ORAL)

1. This revision is directed against the impugned order dated 01.08.2018 passed by the Ld. Judicial Magistrate, Ist Class, Chandigarh in his capacity as Ld. Rent Controller in Rent Petition bearing No.928 of 2015.

2. Vide the impugned order, an application filed on behalf of the respondent-landlord seeking to adduce additional/rebuttal evidence was allowed by the Ld. Court below.

3. Background of the matter is that in the evidence adduced on behalf of the petitioner-tenant, a case was made out to the effect that Yashpal Mahajan, Director of the Landlord Company is having 1/3rd share of SCO No.1114-15, Sector 22-B, Chandigarh, which fact sought to negate the landlord's case of a *bona fide* requirement of the demised premises. It has been noted in Para No.2 of the impugned order that according to the respondent-landlord, the said Yashpal Mahajan has no

concern with SCO No.1114-15, Sector 22-B, Chandigarh, and this fact could be clarified only by leading additional/rebuttal evidence.

4. Ld. Court below allowed the application of the respondent-landlord after taking note of the fact that the evidence pertaining to the alleged share of the said Yashpal Mahajan in the aforesaid property stated to be located in Sector 22-B, Chandigarh was not covered in the initial proceedings by way of written statement filed by the petitioner-tenant. In the opinion of the Ld. Court below therefore the respondent-landlord deserved, *“to be granted an opportunity to clarify and rebut the said fact now”*.

5. When the present revision came up before this Court for consideration on 06.12.2018, had passed the following order:-

“It is necessary to ascertain whether any specific suggestion on behalf of Petitioner/Tenant was put to the Respondent/Landlord, or its witnesses that one of the Directors of the Landlord-Firm namely Yashpal Mahajan had any share in SCO-1114-15 Sector 22, Chandigarh, during the course of cross-examination of Landlord or its witnesses, since admittedly no specific plea to this effect had been taken by the Petitioner/Tenant in its reply in the Eviction Petition.”

6. A copy of the cross-examination of PW-1 in the Ld. Court below has since been placed on record on behalf of the petitioner in the form of Annexure P-6(wrongly numbered as P-6 instead of P-7).

7. Perusal of the same also goes to show that no specific suggestion pertaining to any share in the alleged property bearing No.1114-15, Sector-22/B, Chandigarh to the effect that Director Yashpal

Mahajan had an interest in any share of the same was put to the landlord's witness. The logical result therefore is that evidence to this effect which emerged from the side of the petitioner-tenant subsequently was not only beyond the pleadings but also no attention of the respondent-landlord had at any stage was drawn to the same. He was therefore certainly entitled to give his explanation qua the said evidence beyond the pleadings which had been adduced on behalf of the petitioner-tenant essentially in the form of a surprise sprung upon the landlord's side.

8. In the given circumstances, this Court is not in agreement with the submission of Ld. counsel for the petitioner to the effect that if an opportunity of rebuttal/additional evidence is granted to the respondent-landlord, "*the valuable right accrued to the tenant shall be vitiated*". This is so because assuming that the petitioner-tenant had become aware about the alleged interest of Director Yashpal Mahajan in the aforesaid property of Sector 22-B, Chandigarh, which had not been initially pleaded in the written statement, even in that case, the fact ought to have been raised as a new ground of defence in his written statement in terms of Order 8 Rule 8 of the CPC.

9. For the aforesaid reasons, this Court finds no illegality and impropriety in the impugned order dated 01.08.2018 passed by the Ld. Rent Controller, Chandigarh and the present revision petition, thus, stands dismissed.

January 15, 2019

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**(SUDIP AHLUWALIA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No