

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 6851 of 2014 (O&M)

Date of decision : October 24, 2019

Ganesh Behal and others

.....Petitioners

Versus

Onkar Nath Behal

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. V.K. Sandhir, Advocate
for the petitioner.

Mr. Anil Chawla, Advocate
for the respondent.

LISA GILL, J.

The petitioners have filed this revision petition challenging order dated 22.09.2014 (Annexure P-7) passed by the learned Rent Controller, Amritsar whereby an application under Order 13 Rule 10 CPC filed by the petitioners has been dismissed.

Brief facts necessary for the adjudication of the case are that the petitioners – landlords filed a petition under Section 13 of the East Punjab Urban Rent Restriction Act No. III of 1949 (for short – 'the Act') seeking ejectment of the respondent from the demised premises. The respondent is pleaded to be a tenant on the demised premises and petitioners, the landlords/owners. It is pleaded that as per agreement dated 18.10.1992, the respondent agreed to pay a sum of ₹8000/- per month as rent with further increase of 15% per year. Ejectment of the respondent was sought on the ground of non-payment of arrears of rent and for personal bonafide

necessity of the landlords. Evidence was led by the petitioners. The petitioners' evidence was admittedly closed on 02.12.2013. Thereafter, evidence was led by the respondent and closed on 11.03.2014. Application under Section 65 and 66 of the Indian Evidence Act was moved by the petitioners seeking to prove on record an agreement dated 03.02.1967, stated to be executed and signed by all the co-owners including the father of the respondent – Omkar Nath Behl. The original of the document was stated to be with Onkar Nath and a certified copy of the same was obtained from the file of Suit No. 39 decided on 05.04.1975. The petitioners sought to prove this document by way of secondary evidence as well as the site plan prepared on the basis of the agreement and purportedly signed by all the then co-owners. This application under Section 65, 66 of the Indian Evidence Act was dismissed by the learned Rent Controller, on 01.04.2014. A copy of this order is attached as Annexure P4 with this petition. Civil Revision No. 3414 of 2014 filed by the petitioners challenging order dated 01.04.2014 was withdrawn by the petitioners with liberty to move an appropriate application under Order 13 Rule 10 CPC for bringing the document for which secondary evidence was earlier sought to be led, to the notice of the learned trial Court. Copy of order dated 15.05.2014 passed in Civil Revision No. 3414 of 2014 is attached as Annexure P5.

Thereafter, application under Order 13 Rule 10 CPC as attached as Annexure P-6 was moved by the petitioners. It is mentioned therein that a certified copy of agreement dated 03.02.1967 already stands filed. The said document is stated to be lying in the case file as detailed in para 2 of the application. In para 4 of this application, it is prayed that the said file be ordered to be summoned and the applicant be allowed to prove

these documents from the file in which they are lying. The application was dismissed by the learned Rent Controller, vide impugned order dated 22.09.2014 (Annexure P-7). Aggrieved therefrom, this petition has been filed.

Learned counsel for the petitioners vehemently argued that this application has been filed to prove the authenticity of the document in question and for the satisfaction of the learned trial Court. It is submitted that in the earlier suit decided on 05.04.1975, the original of the document (agreement) 03.02.1967 was produced before the Court and it is thereafter that the certified copy was placed on record. It is submitted that agreement dated 03.02.1967 is vital for the just adjudication of the case as it is through this agreement that the petitioners have got the property to their share. It is further submitted that the learned Rent Controller has decided the petitioners' application while observing that there are two essential conditions to be satisfied before allowing an application in Order 13 Rule 10 CPC. The first condition being that there should be a good reason for not summoning/filing the documents at the appropriate stage i.e. on or before the settlement of issues and secondly, the Court should also give reasons for allowing the production of documents at a stage later than the date of settlement of issues. The application was dismissed as neither of the two conditions were observed to be satisfied. It is vehemently argued that there are no such conditions envisaged in Order 13 Rule 10 CPC, therefore, the impugned order should be dismissed on this ground itself. It is, thus, prayed that this revision petition be allowed.

Per contra learned counsel for the respondent vehemently argued that the petitioners are unnecessarily harassing the respondent. It is

contended that there is no such pleadings in respect to the said agreement to sell in the rent petition. Moreover, it was incumbent upon the petitioners to have led evidence to prove their case while leading evidence in affirmative. Such evidence could not have been led even in rebuttal evidence. Moreover, the application filed by the petitioners under Section 65, 66 of the Indian Evidence Act seeking to lead secondary evidence to prove the agreement in question admittedly stands dismissed. The petitioners revision petition challenging order dated 01.04.2014 was dismissed as withdrawn. Moreover, the petitioners' attempt to prove the documents in question by way of application under Order 13 Rule 10 CPC is clearly impermissible. It is submitted that the said document i.e. agreement dated 03.02.1967 was produced by petitioner No. 1 – Ganesh Behl at the time of recording of his testimony. The same was objected to by the respondents on the ground of mode of proof, admissibility as well as lack of original. The objection, it is submitted, was kept open by the learned Rent Controller, to be decided at the time of arguments. It is further submitted that it was incumbent upon the petitioners to have taken necessary steps at that time itself but no such steps were admittedly taken in respect to the mode of proof or admissibility of the document in question. He relies upon the judgment of the Hon'ble Supreme Court in **R.V.E. Venkatachala Gounder versus Arulmigu Viswearingaswami & V.P. Temple and others 2003 (8) SCC 752** while learned counsel for the petitioner has relied upon decision dated 15.12.2010 by this High Court in Civil Revision No. 7388 of 2010 (Prayer Lal versus Meher Singh and others) wherein it is observed that whenever an objection is raised regarding admissibility of any material during the stage of taking evidence, the learned trial Court can make note of such objection and mark

the objected document tentatively as an exhibit, subject to such objections to be decided at the last stage in the final judgment. It is, thus, prayed by learned counsel for the respondent, that this revision petition be dismissed.

I have heard learned counsel for the respondents and have gone through the file with their able assistance.

Filing of the petition (Annexure P-1) under Section 13 of the Act is a matter of record. It is not denied by learned counsel for the petitioner that an objection as to the mode of proof and admissibility in respect to the document in question was raised by the respondent when it was tendered in evidence by petitioner No. 1. Evidence of the petitioners in this case was admittedly closed on 02.12.2013 and that of the respondent on 11.03.2014. Application under Sections 65, 66 of the Indian Evidence Act filed by the petitioners was dismissed by the learned Rent Controller on 01.04.2014 and Civil Revision No. 3414 of 2014 filed by the petitioners was dismissed as withdrawn on 15.05.2014. It is to be noticed that withdrawal of the civil revision to file an application under Order 13 Rule 10 CPC does not in any manner vest the petitioners with a right to have their said application allowed. The same obviously has to be considered as per law.

At this stage, it is useful to refer to Order 13 Rule 10 CPC which reads as under:-

10. Court may send for papers from its own records or from other Courts. -- (1) The Court may of its own motion, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other Court, the record of any other suit or proceeding, and inspect the same.

(2) Every application made under this rule shall (unless

the Court otherwise directs) be supported by an affidavit showing how the record is material to the suit in which the application is made, and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

(3) Nothing contained in this rule shall be deemed to enable the Court to use in evidence any document which under the law of evidence would be inadmissible in the suit.

In the present case, the petitioners have in fact already filed on record the certified copy of the document. It is informed by learned counsel for the petitioners that it is a certified copy of the said document, which is available on record of the file sought to be summoned. As per Order 13 Rule 10(3) CPC, it is clear that this rule does enable the Court to use in evidence, any document under the law, which would otherwise be inadmissible in the suit. The question of admissibility or otherwise of the document/evidence in hand, needless to say, has to be decided by the learned Rent Controller in accordance with the provisions of law. It is further not in dispute that the objections raised by the respondent regarding admissibility of the documents have been kept pending by the learned Rent Controller to be decided at the time of final arguments. The observations made by the learned Rent Controller regarding the two conditions purportedly under Order 13 Rule 10 CPC cannot be a sufficient ground to set aside the impugned order in the given facts and circumstances of this particular case. Learned counsel for the petitioners is unable to point out any ground for interference in the ultimate conclusion of the learned Rent Controller in the impugned order.

Keeping in view the above, this revision petition is dismissed.

Needless to say, the question regarding the admissibility of the documents shall be decided by the learned Rent Controller at the time of final arguments.

None of the observations in the order are an expression of opinion on the merits of the case and are solely confined for the purpose of the decision of this petition.

October 24, 2019
rts

(Lisa Gill)
Judge

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