

In the High Court of Punjab and Haryana at Chandigarh

CR No. 3437 of 2019(O&M)

Date of Decision: 23.5.2019

Mohinderjit Kaur

---Petitioner

versus

Ashok Kumar

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Surinder Thakur, Advocate
for the petitioner**

Rekha Mittal, J.

Challenge in the present petition has been directed against order dated 25.2.2019 (Annexure P-5) whereby evidence of the petitioner was closed by order of the court and dated 9.5.2019 (Annexure P-9) whereby application filed by the petitioner for recalling order dated 25.2.2019 also did not find favour with the Rent Controller, Hoshiarpur.

Counsel for the petitioner would argue that an application under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (in short "the Act") for ejectment of the respondent from the shop, detailed in head note of the petition, has been filed on various grounds culled out in sub paras A to C of para 3 of the eviction application (Annexure P1). One of the grounds for eviction put forth in sub para C of para 3 is that the building has become unfit and unsafe for human habitation, detailing the facts in support thereof. It is further submitted that no doubt the petitioner availed number of opportunities for adducing evidence but application of

the petitioner permitting building expert to inspect the premises in question was allowed by the Rent Controller, vide order dated 4.2.2019 (Annexure P3) and the expert engaged by the petitioner was directed to visit the suit property on 12.2.2019 from 10 A.M. to 4 P.M. It is argued that Er. Vijay Bagga, building expert engaged by the petitioner visited the property in question on 12.2.2019, in compliance with directions issued by the Rent Controller and prepared his report (Annexure P4). It is vehemently argued that in case the petitioner is not permitted to examine the said building expert, the entire effort of the petitioner to seek permission of the court for inspection of building by said expert on the stipulated date would be rendered futile. In addition, it is argued that in case the building expert engaged by the petitioner is not allowed to be examined, she would be rendered unsuccessful to substantiate her plea that the building has become unfit and unsafe for human habitation. The last submission made by counsel that since the petitioner is a landlady who has sought eviction of the respondent, delay in conclusion of evidence by the petitioner would be of no adverse consequence for the respondent-tenant.

Perusal of order dated 9.5.2019 passed by the Rent Controller would reveal that the petitioner was given 19 effective opportunities before her evidence was closed by order and the said fact shows that the court had shown magnanimity in adjourning the case repeatedly for evidence of the petitioner. At the same time, it is also established position of the case that the Rent Controller allowed application filed by the petitioner for inspection of the building in question by her expert vide order dated 4.2.2019 with a direction that the building would be inspected by the said expert on 12.2.2019 from 10 A.M. To 4 P.M. The petitioner has placed on record

report Annexure P4 that makes reference to visit of the expert on the stipulated dated i.e. 12.2.2019. On 4.2.2019, the court adjourned the case to 18.2.2019 and thereafter the case was adjourned to 25.2.2019, the date on which evidence of the petitioner was closed by order of the court. Keeping in view the fact that the petitioner was permitted to get the building inspected from an expert vide order dated 4.2.2019 and the expert has actually visited the spot on the stipulated date coupled with that a serious prejudice would be caused to the petitioner in case she is not permitted to examine the building expert in support of her contention that the building has become unfit and unsafe for human habitation and the fact that no prejudice shall be caused to the respondent-tenant even if there is some delay on the part of the petitioner to adduce and complete her evidence, interest of justice commands that one opportunity is allowed to the petitioner to examine the building expert, subject to costs of Rs. 10,000/- to be paid to the respondent by way of demand draft, before starting of evidence of Er. Vijay Bagga.

In view of what has been discussed hereinbefore, orders impugned are set aside. The petitioner is allowed one effective opportunity for examination of Er. Vijay Bagga with the directions that the petitioner shall supply a copy of the report prepared by the expert and his affidavit to be filed by way of examination in chief in advance to counsel opposite so that examination of the expert is completed on the day, to be fixed by the Rent Controller for aforesaid purpose. It is clarified that under the guise of order passed by this Court, the petitioner shall not be entitle to lead any other evidence except examination of Er. Vijay Bagga.

Before parting with this order, it is pertinent to mention that

petition has been disposed of without notice to the respondent in order to save him from unnecessary expenses and inconvenience. The respondent would be at liberty to file an application before this Court if he has any grievance to express.

(Rekha Mittal)
Judge

23.5.2019

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No