

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

CR-3370-2016 (O&M)
Date of decision : 03.03.2020

Hari Ram (since deceased) through his legal heir

...Petitioner(s)

Versus

Hazari Lal

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Akshay Bhan, Sr. Advocate with
Mr. Rohit Nagpal, Advocate for the petitioner(s).

Mr. Ashish Aggarwal, Sr. Advocate with
Mr. Kulwant Singh, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

CM-9981-CII-2016

For the reasons stated in the application, which is duly supported by an affidavit, legal heirs of the petitioner-Hari Ram, as mentioned in para 2 of the application are ordered to be brought on record.

Application is allowed.

CM-9982-CII-2016

This is an application filed under Order 41 Rule 27 read with Section 151 of CPC for additional evidence.

Application is disposed of.

Main case

The tenant-petitioner has filed the present revision petition

under Sub-Section 6 of Section 15 of the Haryana Urban (Control of Rent and Eviction) Act, 1973, against the concurrent orders of eviction passed against the petitioner.

At the outset, it must be noticed that the petition was filed by the landlord for bona fide requirement of his son Rajesh who wanted to open the business from the tenanted premises. The tenant contested the petition and pleaded that the son of the landlord Rajesh is working in Shahdra, Delhi.

On 26.09.2012, an application under Section 151 was filed by the tenant alongwith certain photographs and one C.D. for permission to produce the same in additional evidence. The order passed on 26.09.2012 is extracted as under:-

“Today the case was fixed for rebuttal evidence if any and arguments. Arguments and rebuttal evidence adduced and the rebuttal evidence was closed. Id. Counsel for the defendant during the course of arguments moved an application under Section 151 alongwith certain photographs and 1 CD. Copy given. Reply filed after lunch by the plaintiff. Arguments on the said application also heard alongwith main arguments. Now to come upon for orders for 04.10.2012.”

Thereafter, following orders were passed by the Court:-

“ORDER DATED 04.10.2012:-

Present: Sh. N.C. Sanghi, Adv. for petitioner

Sh. B.S. Bhardwaj, Adv. for respondent

Order not ready. Now to come upon 08.10.2012 for orders.

ORDER DATED 08.10.2012:-

Present: Sh. N.C. Sanghi, Adv. for petitioner

Sh. B.S. Bhardwaj, Adv. for respondent

Order not ready. Now to come upon 15.10.2012 for orders.

ORDER DATED 15.10.2012:-

Present: Sh. N.C. Sanghi, Advocate for petitioner

Sh. B.S. Bhardwaj, Advocate for respondent.

Today the case was fixed for orders on the application for adducing the additional evidence moved by the defendant. However, learned counsel for the plaintiff stated that now new facts have cropped, as such requested for adjournment. Since, the order has not been pronounced, so the case is adjourned to 22.10.2012 for the contention of the learned counsel for the plaintiff.

ORDER DATED 22.10.2012:-

Present: Sh. N.C. Sanghi, Adv. for petitioner

Sh. B.S. Bhardwaj, Adv. for respondent

On the request of the ld. counsel for the petitioner the case is adjourned to 30.10.2012 for the complainant of the ld. counsel for the plaintiff.

ORDER DATED 30.10.2012:-

Present: Sh. N.C. Sanghi, Adv. for petitioner

Sh. B.S. Bhardwaj, Adv. for respondent

Today the case was fixed for arguments. Fresh arguments advanced. Now to come upon orders for 01.11.2012 on the application for additional evidence moved by the respondent as well as final order.

ORDER DATED 01.11.2012:-

Present: Sh. RK Sanghi, Advocate for petitioner

Sh. B.S. Bhardwaj, Advocate for respondent

Heard on the application under Section 151 CPC filed by the respondent for leading additional evidence for placing on record the photographs and Video clip vide which it could be proved that the son of the petitioner namely Rajesh Kuamr in fact had a shop under the name and style of JS Jewellers at Shahdra, Delhi, as such the petitioner was not in the need of the shop in question being bonafide requirement. It was stated that on 21.9.2012 the relative of the respondent namely Deepak had purchased certain silver ornaments from the said shop while at the time of purchasing, another person accompanied with Deepak had taken eleven photographs of the son of the petitioner Rajesh in his mobile phone while a video clip was also prepared. It was stated that earlier it was not possible to get the said evidence to be placed on record as such same be taken into consideration.

On the other hand, the present application was vehemently disputed by learned counsel for the petitioner and it was contended that son of the petitioner namely Rajesh was not doing any business at Shahdra, Delhi and the respondent had failed to give any specification with regard to the shop in which the said business was being conducted. On 19.9.2012 part arguments had been already heard and for that the respondent cannot create evidence in his favour while the photographs and video graphy sought to be placed on record was false and tampered with, as such it was prayed that the present application be dismissed. Heard. In the interest of justice, considering the fact that the respondent had specifically taken the plea that the son of the petitioner Rajesh was doing the jewellery business at Shahdara, Delhi which in due circumstances could not be

proved by him by leading cogent evidence. The present application in hand deserves to be allowed. However, the said application is allowed subject to the cost of Rs.500/- to be paid by the respondent to the petitioner. Now to come upon 3.11.2012 for final arguments and the payment of the costs.

ORDER DATED 03.11.2012:-

Present:- Shri N.C. Sanghi, Advocate for petitioner.

Shri B.S. Bhardwaj, Advocate for respondent.

Rebuttal evidence closed. Arguments heard. Order announced. Vide my separate order of even date, the present ejectment petition filed by the petitioner against the respondents qua the property in question stands allowed and the counter claim of the respondent is also allowed and the respondent is held entitled to recover Rs.334.80 paise from the petitioner being the excess amount so received by him subject to the decision by the Hon'ble High Court in civil revision no.CR no.4083 of 2002 Ex.PX. The respondent is directed to hand over the vacant possession of the shop in question to the petitioner within a period of three months. In default the petitioner is entitled to get the vacant possession of the shop in question in due course of law. There is no order as to costs. Reader of this court is directed to prepare memo of costs. File be consigned to the record room.

Pronounced in open Court”

It is apparent that even after allowing the application for additional evidence, the Rent Controller did not permit the tenant to prove those documents. No counter opportunity was granted to the landlord to rebut.

Learned Rent Controller ordered the eviction against which the appeal was filed by the tenant. Learned Appellate Authority rather than

arriving at a firm finding, observed as under:-

“Even if, it is presumed that son of petitioner is doing business at Shahdra under the name and style of JS Jewellers, there is no bar under the law to restrain the son to start his business at Narnaul afresh.”

In the considered view of this Court, the Rent Controller and the Appellate Authority being the Courts of fact, were required to follow the procedure and grant opportunity to the tenant to prove the documents which were permitted to be produced in additional evidence on allowing application for additional evidence.

Learned counsel appearing on behalf of the respondent submits that even if these documents although not proved are taken into consideration, still the tenant is liable to be ejected.

This Court has considered the submissions. However, find that the arguments of learned Senior Counsel for the respondent cannot be accepted because there is no shortcut in the procedure to be followed. Still further, the ejectment petition cannot be decided on the basis of inferences.

It is pertinent to note here that the landlord has not pleaded that his son is working in Delhi and the present premises is required by his son to open a new business or to expand. In these circumstances, it is necessary to grant opportunity to the tenant to further cross-examine son of the landlord so that the actual facts come on record.

This Court is intentionally not going into the detail, lest it may prejudice the case of any of the party.

Keeping in view the aforesaid facts, the orders under challenge are set aside. The case is remitted back to the Rent Controller to grant an

opportunity to the tenant to prove the documents. A counter opportunity shall also be granted to the landlord to produce the evidence in response to the additional evidence so led. Thereafter, the Rent Controller would proceed to decide.

Since, the ejectment petition was filed in the year 2006, therefore, the Rent Controller is requested to decide the matter once again uninfluenced by the previous orders passed by the Rent Controller affirmed in appeal within a period of three months.

Parties through their counsel are directed to appear before the Rent Controller on 17.03.2020.

Learned counsel for the respondent has pointed out that the tenant has not paid/deposited the rent since 2011. Before the tenant is granted an opportunity to lead additional evidence, deposit of entire arrears of rent shall be the condition precedent.

In view of what has been observed above, the present revision petition is disposed of.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

03.03.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No