

CR-1137-2022

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

CR-1137-2022

Date of Decision: December 01, 2022

Mohd. Suhail @ Mubin and others

...Petitioners

Versus

Mushtak Ahmed

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Arjun Atri, Advocate for the petitioners.

None for the respondent.

DEEPAK GUPTA, J.(Oral)

This revision is directed against the order dated 24.01.2022 (Annexure P4) passed by Ld. Trial Court, whereby application for leading additional evidence moved by the petitioners-plaintiffs, has been dismissed.

2. Petitioners-plaintiffs filed a civil suit for mandatory & permanent injunction claiming therein to be owner in possession of the land comprised khasra/khata No.721/773, Rect No.39 killa no.4 situated within the revenue estate of village Nalhad, Tehsil & District Nuh, on which they had constructed some shops. One of the shops was leased out to the respondent-defendant for a period of 11 months on monthly rent of ₹5,000/- w.e.f. 04.10.2016 to 03.09.2017. The shop was to be used for medical store. Respondent-defendant failed to pay the rent w.e.f. 04.09.2017 onwards. After serving notice upon the respondent-defendant, petitioners-plaintiffs filed the suit claiming mandatory injunction to direct the respondent-defendant to vacate the demised shop. Respondent-defendant in the written statement denied the tenancy. According to him,

plaintiffs-petitioners and other proprietors are co-sharers in *shamlat thula* and that plaintiffs-petitioners had already sold more than their share to different persons. Denying the tenancy, defendant pleaded that he was regularly making payment of rent to the actual landlord. The written statement (Annexure P-2) reveals that it is not disclosed by the respondent-defendant as to whom he was paying the rent.

3. The case was at the stage of rebuttal/arguments, when petitioners-plaintiffs moved an application for additional evidence, which has been declined by the Trial Court by way of the impugned order.

4. It is submitted by the learned counsel that it is only during the cross-examination of respondent-defendant as DW1 that he disclosed that he had deposited the site plan and rent deed of the demised shop to the licensing authority. It is only thereafter that petitioners collected information under the RTI in respect of copies of the site plan, rent deed and the copy of the licence of the respondent-defendant along with other documents annexed by him in the office of licensing authority i.e. Drugs Control Officer, Food & Drugs Administrator, Mewat at Nuh. It is in order to prove those documents, which are essential to decide the controversy involved in the suit that petitioners had prayed for additional evidence. Learned counsel submits that the evidence proposed to be produced by way of additional evidence will help in deciding the real controversy between the parties, as in the written statement respondent-defendant has denied the tenancy but during his testimony, he admitted the tenancy and having furnished certain documents before the licensing authority.

5. Despite notice of this revision to the respondent, nobody has made appearance for him. So he is proceeded ex parte.

6. Having heard learned counsel for the petitioners-plaintiffs and perusing the paper book, I find that application for additional evidence has been wrongly rejected by learned Trial Court.

7. Since it emerged only in the cross-examination of DW1 that he had deposited site plan and rent deed of the disputed shop & other documents before the licensing authority and it is only thereafter that plaintiffs-petitioners collected the requisite information under RTI, so petitioners-plaintiffs deserve the right to produce that evidence by way of additional evidence. As such, impugned order is hereby set aside. The Trial Court is directed to provide opportunity to the petitioners-plaintiffs to produce additional evidence. Of course, respondent-defendant will have the right to produce evidence in rebuttal to the said additional evidence.

8. The revision is disposed of accordingly.

December 01, 2022

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(DEEPAK GUPTA)
JUDGE

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