

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

CR-4069-2022

Decided on:-21.11.2022

Rajesh Tiwari

....Petitioner

vs.

Arya Pratinidhi Sabha Punjab (Regd.)

....Respondent.

CORAM:HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Varun Sharma, Advocate for the petitioner.

Mr. Sudhir Paruthi, Advocate for the respondent.

HARKESH MANUJA J. (Oral)

By way of present revision petition, challenge has been made to an order dated 20.01.2020 (Annexure P-1) passed by the learned Rent Controller, Jalandhar, whereby, prayer made by the petitioner-tenant for recalling of PW1, namely, Joginder Singh, whose examination was treated to be NIL, has been declined.

2. Facts of the present case are that the respondent being landlord filed an eviction petition under Section 13 of the East Urban Punjab Rent Restriction Act, 1949 against the petitioner-tenant, *inter alia* on the grounds of payment of arrears of rent, ceased to occupy the demised premises and bonafide necessity.

3. After framing of the issues, PW-1, Joginder Singh, appeared as witness on behalf of the respondent-landlord and his affidavit in examination-in-chief was tendered before the learned Rent Controller on 27.08.2019, thereafter, the rent petition was adjourned for the purpose of his cross-examination. But, despite having been granted five effective opportunities, the petitioner failed to effect cross-examination and accordingly, vide order dated 27.11.2019, his opportunity was recorded to

be NIL

4. On the same date i.e. 27.11.2019, an application was filed by the petitioner-tenant seeking recalling of the said order along with permission to cross-examine PW-1, however, the said prayer made by the petitioner-tenant was declined by the Rent Controller, vide order dated 20.01.2020. Thereafter, the evidence of the respondent-landlord continued and later came to be closed vide order dated 30.09.2022. Just before the closure of the evidence of respondent-landlord, the present revision petition has been filed, impugning the order dated 20.01.2020, vide which, the prayer made by the petitioner-tenant for recalling of PW-1-Joginder Singh, so as to effect cross-examination upon him, was rejected.

5. Learned counsel for the petitioner submits that in case, the petitioner-tenant is not afforded an opportunity to cross-examine PW-1, the petitioner will not be able to put forth his stand taken in the written statement and will not be able to defend the eviction petition in an effective manner.

6. On the other hand, learned counsel for the respondent-landlord submits that there has been an inordinate delay on the part of the petitioner-tenant while approaching this Court, impugning the order dated 20.01.2020. He also submits that despite having been granted sufficient opportunities, the petitioner-tenant did not cross-examine PW-1-Joginder Singh, just to delay the disposal of eviction petition filed against him.

7. I have heard learned counsel for the parties and gone through the paper book.

8. Perusal of record shows that no doubt, there appears to be lack of due diligence on the part of the petitioner-tenant, however, considering

the fact that substantial rights of the petitioner are going to be adjudicated upon by the learned Rent Controller while deciding the eviction petition, filed at the instance of respondent-landlord and, in case, the petitioner-tenant is not permitted to cross-examine PW-1, he will not be able to put forth his defence and contest the case set-up by the respondent-landlord, as well, as such, instead of adopting hyper-technical approach a more pragmatic approach needs to be adopted, in order to do substantial justice between the parties. In addition, the cross-examination upon PW-1 will also enable the learned Rent Controller to adjudicate upon the rights of the parties more effectively.

9. In view of the discussion made herein above, the impugned order dated 20.01.2020 passed by the learned Rent Controller, is hereby set aside, consequently, the revision petition is allowed by granting one effective opportunity to the petitioner-tenant, to cross-examine PW-1 on the next date of hearing fixed before the Rent Controller i.e. 25.12.2022 or any suitable date fixed by it, on which date the presence of PW-1-Joginder Singh shall be ensured by the respondents, unless faced with unforeseen or unavoidable circumstances.

10. The aforesaid order shall be subject to payment of cost of Rs.10,000/-, which shall be deposited by the petitioner-tenant with the Punjab and Haryana High Court Bar Clerk's Association, within 15 days from today.

11. Pending application(s), if any, shall also stand disposed of.

21.11.2022
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(HARKESH MANUJA)
JUDGE