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

CR-335-2020 (O&M)

Date of Decision:- 30.11.2023

KANTA @ KAMAL KANTA AND ANOTHER

...Petitioners

Vs.

SUBASH CHANDER AND OTHERS

...Respondents

CORAM:-HON'BLE MS. JUSTICE AMARJOT BHATTI

Present: Mr. B.S. Mittal, Advocate for the petitioners.
Mr. Kuldeep Sanwal, Advocate for the respondents
No.1 and 2.

AMARJOT BHATTI, J. (Oral)

1. The petitioners have filed revision under Article 227 of the Constitution of India for setting aside the impugned order dated 25.11.2019 (Annexure P-8) passed by learned Rent Controller, Batala vide which application filed by the petitioners to struck off affidavit of Subhash Chander respondent No.1 has been dismissed.

2. Learned counsel for the petitioners argued that the respondent Nos.1 and 2 had filed petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 for ejectment of the respondents from the shop situated at Chakri Bazar, Batala. The present petitioners were respondent Nos.5 and 6 in the said ejectment application. The learned Rent Controller dismissed the application for ejectment by passing order dated 17.03.2003 which is Annexure P-1. The present petitioners were proceeded ex-parte

in the proceedings before Rent Controller Batala. The respondent Nos.1 and 2 filed appeal under Section 15 of the East Punjab Urban Rent Restriction Act, 1949 before the Appellate Authority and the ejectment order was passed on the ground of bonafide requirement vide judgment dated 16.12.2006, which is Annexure P-2. The respondent No.6 filed civil revision which was dismissed by the Hon'ble High Court vide order dated 25.07.2018. Thereafter, the petitioners filed application for setting aside the exparte order dated 17.03.2003 under Order 9 Rule 13 CPC stating that they were never served in the said case. The application filed by them is Annexure P-3 and the reply filed by respondent Nos.1 and 2 is Annexure P-4. During the evidence of respondent Nos.1 and 2, the respondent No.1 tendered his affidavit in examination-in-chief which is Annexure P-5. In the said affidavit certain facts were mentioned which were not there in the pleadings, therefore, the present petitioners filed application to struck off the affidavit of Subhash Chander. The application is Annexure P-6 and reply thereto is Annexure P-7. Learned Rent Controller dismissed the said application by passing impugned order dated 25.11.2019, which is Annexure P-8. It is argued that the order passed by learned Rent Controller is not on sound footing. In the said affidavit of Subhash Chander certain facts were mentioned which were not in their pleadings, thus it was beyond pleadings. To support his arguments, the learned counsel for the petitioners has relied upon the authority cited in **2021 (1) CiviCC 327** titled as **"Biraji @ Brijraji and Anr. Vs. Surya Pratap and Ors."** where in that case the suit was filed for cancellation of registered adoption deed and for consequential injunction orders. After the evidence was closed, the plaintiff had filed application to summon record relating to leave of

defendant on the day of adoption and claimed that the plaintiff was not present in the ceremony of adoption. It was explained that in the absence of pleadings, evidence will not help the party. In that case the application filed at a belated stage to summon the record to prove that the defendant was on duty on the day of adoption was declined. He has also relied upon another authority of coordinate Bench in **2019 (1) R.C.R. (Civil) 374 titled as “Nazar Singh Vs. Kulbir Kaur and others”** where in that case the averments in the affidavit of affirmative character were held not to be acceptable in rebuttal evidence and consequently the claim of petitioner for striking off para Nos.1, 5, 8, 9 and 19 to 22 was allowed. It was held that the plaintiff cannot be permitted to lead evidence in rebuttal to prove facts required to be established in affirmative. The learned counsel for the petitioners argued that the affidavit furnished by Subhash Chander, Annexure P-5, on page No.2 regarding service in Rent Appeal No.47 of 2003 and the documents relied upon in this regard are beyond pleadings. Therefore, the same cannot be read into evidence and the affidavit tendered by Subhash Chander in this regard should be struck off.

3. On the other hand, the civil revision preferred by the present petitioners is opposed by learned counsel for respondent Nos.1 and 2 taking the stand that the facts are pertaining to the proceedings which took place in the rent appeal referred above. The said facts are based on documents. Therefore, the same cannot be ignored. The learned counsel for the respondents further pointed out that as per the impugned order dated 25.11.2019, Annexure P-8, the learned trial Court has kept the objection open by giving a finding that the question of its admissibility shall be considered at the time of arguments and the applicant will get full

opportunity to rebut the same by cross-examining the witness. Therefore, the impugned order does not require any interference and the revision petition filed by the petitioners may kindly be dismissed.

4. I have considered the arguments and have gone through the record available on the file. The present petitioners filed application under Order 9 Rule 13 CPC for setting aside exparte order dated 17.03.2003 which is Annexure P-3. The application was contested and the reply to the said application is Annexure P-4. During the course of evidence Subhash Chander filed his affidavit, Annexure P-5, in examination-in-chief where he narrated certain facts regarding appearance of petitioners in Rent Appeal No.47 of 2003 along with the documents. As per the case of present petitioners, the said facts are beyond the pleadings. Therefore, the same cannot be read into evidence and on that account the said affidavit should be struck off. It is settled proposition of law that any evidence beyond pleadings cannot be read into evidence. The learned trial Court while deciding the application filed by the petitioners in the impugned order dated 25.11.2019 categorically stated that the objection is kept open and the admissibility of evidence shall be considered at the time of arguments. It was further held that applicant will get full opportunity to rebut the same by cross-examining witness. Therefore, it cannot be said that the application filed by the petitioners was declined. In-fact the objection is kept open and the present petitioners were called upon to cross-examine the witness.

5. Considering the aforesaid factual position, I do not find any reason to interfere in the order dated 25.11.2019 passed by the trial Court

and the same is accordingly upheld and the revision petition filed by the petitioners is, accordingly, declined.

Pending application (s), if any, also stands disposed of.

30.11.2023

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(AMARJOT BHATTI)
JUDGE

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