

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

CR 150/2018 (O&M)

Date of decision: 19.01.2023

Mehmood Ali

.....Petitioner

Vs.

Abdul Wahid and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sunny K. Singla, Advocate for the petitioner
Mr. Jai Bhagwan, Advocate for respondent no.1.

Nidhi Gupta, J.

Present revision petition has been filed for setting aside the order dated 2.12.2017 passed by Ld. Rent Controller, Malerkotla whereby the application filed by the petitioner/tenant to recall respondent no.1/landlord for further cross-examination has been dismissed.

Brief facts of the case are that respondent no.1 had filed an eviction petition dated 30.7.2007 (Annexure P-1) u/s 13 of the East Punjab Urban Rent Restriction Act, 1949 against the petitioner and proforma respondents herein, on grounds of bona fide personal necessity and arrears of rent. During the course of trial, it transpired that during cross-examination of RW-2 Sham Lal Gupta, Deed Writer, he made reference to a document dated 23.4.2014, stated to be a rent note, whereby the respondent/landlord had allegedly rented out another shop to one Kamal Bharti. Accordingly, the petitioner filed the present application dated 25.11.2017 for recalling of the respondent/landlord for further cross-examination. It is this application which

has been dismissed by the Ld. Rent Controller, Malerkotla, vide impugned order which has been challenged in this revision petition.

It is submitted by learned counsel for the petitioner that admittedly cross-examination of the respondent No. 1-landlord PW1, had been concluded on 18.3.2014. It is submitted that however, at that time document dated 23.4.2014 was not in existence, and the same came to light during evidence of the petitioner, as a result of which it was necessitated that the respondent/landlord be recalled for further cross examination. It is submitted that one of the grounds taken by the respondent/ landlord in his eviction petition is that he required the shop in dispute for his own use and occupation; and the respondent no.1 had specifically mentioned in para 4 of his eviction petition that he does not occupy another shop and has not vacated any shop after the commencement of the Rent Act. Learned counsel for the petitioner refers to the testimony dated 25.10.2017 of the said witness RW-2 (Annexure P-5) wherein RW-2 has deposed as follows:-

“Stated that I am working as Deed Writer since 1982 at Malerkotla. I have brought my original register containing entry no. 35 dated 23.04.2014 vide which Kamal Bharti son of Ramesh Dutt r/o Malerkotla took a shop situated at Kacha Kot Malerkotla on rent at the rate of Rs. 2000/- per month from the owner Abdul Waheed son of Mohd. Rafiq r/o Malerkotla. Against the said entry in my register, Kamal Bharti Tenant, Abdul Waheed landlord and two witnesses have signed in my register. The attested copy of the said register is Ex-R7”.

XXXXX by Sh. Kashif Ali, Adv counsel for applicant.

Cross deferred at the request of learned counsel for applicant”.

It is submitted that from the above testimony it is clear that during the pendency of the eviction petition, the respondent-landlord had created another tenancy and rented out another shop owned by him @ Rs.2000/- per

month to another tenant Kamal Bharti. It is submitted that therefore, the landlord is owner of other shops and therefore, his bona fide personal necessity of demised premises is not made out. Ld. counsel relies upon judgment passed by the Hon'ble Supreme Court in '**KK Velusamy v N. Palanisamy**', **Law Finder Doc Id # 252620**, to submit that the "*Court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic*".

In response, learned counsel for the respondent/landlord submits that a perusal of the purported 'rent note' dated 23.4.2014 (Annexure P-6) shows that the said shop has been in possession of said Kamal Bharti since 1988. It is submitted that this was not a rent note or even a new tenancy, but in fact, by way of the said document only rate of rent had been increased from Rs.1250/- per month to Rs.2000/- per month. Learned counsel also refers to the cross-examination of RW-2 at Annexure P-5 to submit that said RW2 himself has admitted in his cross-examination that the said shop has been in possession of Kamal Bharti since 1988. It is submitted that accordingly at the time of filing of the eviction petition in 2007, the tenancy of the year 1988 already existed.

It is further submitted that the respondent had filed eviction petition in the year 2007, however, the application for recalling the respondent/landlord for further cross-examination has been filed by the petitioner only in the year 2017, and the same is therefore, only a delaying tactic. It is stated that RW-2 is petitioner's witness and the tenancy referred to in his testimony is not a new tenancy.

Heard Ld. Counsel for the parties.

In my view there is merit in the submissions advanced on behalf of the learned counsel for the respondent/landlord. A perusal of the record clearly

shows that tenancy with Kamal Bharti is of the year 1988 and is not a new tenancy. This is evident first and foremost, from Annexure P-6/ the purported 'rent note' dated 23.4.2014 itself, wherein said Kamal Bharti has stated that "*The possession of the said shop was already with me as Tenant. The above said shop and room (chobara), are under my possession, and under my tenancy from the rent note dated 9.5.1988 @ Rs.1250/- per month from now i.e 1.5.2014 I have taken the shop on rent at the rate of Rs.2000 per month.*" Thus, document dated 23.4.2014 (Annexure P-6) is not a rent note whereby a new tenancy has been created by the respondent-landlord, but vide said document only rate of rent has been increased.

Further, even as per cross-examination of RW2, it is admitted that the tenancy with Kamal Bharti was in existence since 1988. RW2 in his cross-examination Annexure P-5 has stated that "*As per rent note that Tenant was already in possession of shop and room (chobara) from dated 9.5.1988 @ 1250/- per month.*"

As such, in view of the above admitted position, it is not clear as to how the document dated 23.4.2014 is relevant to the present eviction petition, and why further cross-examination of landlord in relation thereto, is pertinent to the case. Learned counsel for the petitioner is unable to explain as to how further cross-examination of respondent no.1 is required or helpful in regard to the said document.

Moreover, the respondent had filed the present eviction petition in the year 2007 i.e. almost 15 years ago. The petitioner has already examined two witnesses. The matter cannot be allowed to be delayed further for spurious purposes. I am constrained to observe that the petitioner is resorting to delaying tactics to protract the trial.

For the reasons stated above, I find no merit in this revision
petition, and the same is hereby, dismissed.

(Nidhi Gupta)
Judge

19.01.2023
Joshi

Whether speaking/reasoned	Yes
Whether reportable	Yes/No