

CR-5215-2018 (O&M)

- 1 -

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

108

CR-5215-2018 (O&M)
Decided on : 01.09.2023

Kashmir Kaur

. . . Petitioner(s)

Versus

Harbinder Singh and others

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Amit Arora, Advocate
for the petitioner(s).

Mr. Harpreet Singh Multani, Advocate
for applicant-respondent No.1.

SANJAY VASHISTH, J. (Oral)

CM-15756-CII-2023

i. This is an application filed under Section 151 CPC by applicant-respondent No.1, for pre-poning the date of hearing of the main case i.e. CR-5215-2018, which is fixed for 10.03.2024, to an early date.

ii. On 28.08.2023, following order was passed:-

*“CM-14904-CII-2023 in CR-5215-2018
KASHMIR KAUR
V/S
HARBINDER SINGH AND OTHERS*

*Present: Mr. H.S. Multani, Advocate
for the applicant/respondent No.1.*

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This is an application moved by respondent No.1/landlord for vacation of the stay order dated 24.08.2018, whereby passing of final order was stayed by this Court.

Main case i.e. CR-5215-2018, is now fixed for 10.03.2024 for deciding a small issue as to whether, order of the dismissal of the application for leading additional evidence is correct or not.

Notice to the non-applicant/appellant for 01.09.2023.

To be shown in the urgent list.”

iii. Notice of this application to the non-applicant/petitioner.

iv. Mr. Amit Arora, Advocate, who is present in Court, accepts

CR-5215-2018 (O&M)

- 2 -

notice on behalf of the non-applicant/petitioner, and states that he has no objection, if the prayer made in the application is allowed, and any earlier date, which is convenient to this Court, is fixed in the matter.

v. After considering the submissions from both the sides and going through the contents of the application, prayer made in the application is allowed. Consequently, the date of hearing in the main case i.e. CR-5215-2018, is advanced from 10.03.2024 to today itself i.e. 01.09.2023.

CM stands disposed of.

CR-5215-2018 (O&M)

1. Present revision petition has been filed by the petitioner/tenant – Kashmir Kaur (respondent No.1 before the Trial Court), challenging the order dated 01.08.2008, whereby, application filed by her for cross-examining the Local Commissioner, and for producing the record of Municipal Council by way of additional evidence, was dismissed.

2. Counsel for the petitioner/tenant submits that copy of the order dated 24.08.2017, passed by the learned Rent Controller, is not appended with the present petition, yet, permission is sought to produce the same on record of the present petition at this stage.

Accordingly, copy of the order dated 24.08.2017, is taken on record, subject to all just exceptions. Office to tag the same at appropriate place in the case file. Order dated 24.08.2017, says as under:-

*“Present: Shri B.S. Saluja, Advocate for petitioner.
Shri Abhinav Sharma, Advocate for respondents*

Arguments on application under order 26 rule 10 Civil Procedure Code, 1908 heard, whereby the respondents have sought permission to cross-examine the local commissioner, who was appointed by the Court in terms of order dated 01.12.2015. The instant application was filed on

CR-5215-2018 (O&M)

- 3 -

dated 04.01.2016 i.e., immediately after 17.12.2015 when the report of the local commissioner was received. However, the application remained pending for disposal and this is how, the Court is seized of the matter again. After hearing learned Counsel for the parties and after perusing the record carefully and keeping in view the provisions of order 26 rule 10(2) Civil Procedure Code, 1908, I found the application to be allowed. The local commissioner was appointed at the request of the respondents and it is the respondents, who wants to cross examine the said expert to assail her report. Hence, in order to arrive at just decision of the case and in order to give an opportunity to cross examine the local commissioner to the respondents, the application under consideration is accepted. The local commissioner appointed vide order dated 01.12.2015 is directed to appear into the witness box for her cross-examination. However. before that, arguments on application Under section(s) 151 Civil Procedure Code, 1908 be advanced on 20.09.2017.

*Karan
Stenographer Gr.III*

*Sumit Bhalla (UID No.PB0259)
Rent Controller
Tarn Taran/24.08.2017”*

3. By referring the aforementioned order, learned counsel for the petitioner submits that in fact, Local Commissioner was appointed by the learned Rent Controller itself, and the permission was also granted to cross-examine the said witness, at the instance of the petitioner/tenant. However, thereafter, respondent No.1/landlord (applicant before the learned Rent Controller), started leading his evidence on the issues framed by the learned Rent Controller, and the presence of Local Commissioner, who was supposed to be cross-examined in pursuance to the order dated 24.08.2017, was never secured by the Court.

Therefore, at the stage of rebuttal and arguments, tenant (petitioner herein), moved an application (Annexure P-3) again for leading

additional evidence, which is detailed in paragraph No.5 of the application, same is reproduced as under:-

“5. That the applicant want to lead the following evidence in her additional evidence

(i) The local commissioner miss Kirandeep Kaur Advocate Tarn Taran for cross examine to clarify the report.

(ii) Municipal record of the site plan of the entire constructed area of the petitioner out of which the shop in dispute is part along with the area of covered four shops.”

4. On the other hand, learned counsel for respondent No.1 submits that there is no dispute that at one point of time vide order dated 24.08.2017, learned Rent Controller itself had granted permission to cross-examine the Local Commissioner, but there was never any permission for leading any other evidence, as sought by the petitioner/tenant i.e. the Municipal record of the site plan of the entire constructed area of the petitioner (mentioned at Serial No.5(ii) of the application).

5. However, with all fairness and to avoid further delay of the trial before the learned Rent Controller, learned counsel for respondent No.1 (landlord) submits that if petitioner/tenant completes his evidence within a period of four weeks or so i.e. up till 06th October, 2023, by having two opportunities subject to the payment of some reasonable cost, he would not oppose the prayer made in the present revision petition.

6. Accordingly, present revision petition is **allowed** by setting aside the impugned order dated 01.08.2018 (P-5), and the learned Rent Controller is directed to grant two effective opportunities to the petitioner (tenant), for leading the additional evidence, which he seeks to lead, and as

CR-5215-2018 (O&M)

- 5 -

has been projected in paragraph No.5 of the application (P-3), which was dismissed by the learned Rent Controller. In any case, the opportunity for leading additional evidence, as sought by the petitioner, would be brought on record by 06th October, 2023, **and same would be subject to the payment of Rs.10,000/- as costs, to be paid to respondent No.1 (landlord) by the petitioner (tenant).**

7. With the aforementioned observations and terms, present revision petition stands **disposed of**.

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

(SANJAY VASHISTH)
JUDGE

September 01, 2023

J.Ram

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*