

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

CR-6080-2018 (O&M)

Date of Decision: August 09, 2023

RAM GOPAL SINCE DECEASED THR LRs Petitioner
Versus
SARDARI LAL HANDA SINCE DECEASED THR LR AND ORS
..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Vivek Sharma, Advocate for the petitioner.
Mr. Namit Gautam, Advocate for respondents.

HARKESH MANUJA, J. (ORAL)

By way of present revision petition, challenge has been laid to the judgments dated 08.03.2017 and 16.04.2018 passed by the Courts below whereby an eviction petition filed against the petitioners qua the demised premises that is situated on the first floor portion forming part of shop No.B-IV-299, Bazaar Sarafan, Ludhiana was allowed on the ground of personal necessity of respondents-landlord.

2. Briefly stating, the respondents-landlord filed an eviction petition against the petitioner-tenant qua the demised premises i.e. the first floor portion forming part of shop No.B-IV-299, Bazaar Sarafan, Ludhiana, on the ground of his own personal necessity besides that of his son Ashwani Handa who has been running a jewellery shop on the ground floor of the aforementioned property. The petitioner-tenant disputed the bona fide need of the respondents-landlords by filing detailed written statement.

3. The Ld. Rent Controller vide judgment dated 08.03.2017 allowed the eviction petition filed at the instance of respondents-

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landlord passing orders of eviction against the petitioner-tenant. Aggrieved thereof, the petitioner filed First Appeal, which was dismissed by the Appellate Authority vide judgment dated 16.04.2018.

4. Impugning the aforementioned judgments, learned counsel for the petitioner submits that the entire finding has been recorded by the Courts below by relying upon the affidavit of PW5-Ashwani Handa which was not even tendered in the evidence before the Rent Controller and thus the same could not have been read as a piece of evidence in support of eviction petition. For the said purpose, reliance has been placed upon Sections 3 and 137 of Indian Evidence Act, 1872 as well as Order 18 Rule 4 CPC 1908. Learned counsel further submits that though the said witness was cross-examined, however, in the absence of his affidavit, having been tendered before the Court, the cross-examination was required to be struck off. Learned counsel also submits that the First Appellate Court failed to take judicial notice of the subsequent events which occurred during pendency of the eviction proceedings whereby one shop situated on the third floor of the premises in question was vacated by the tenant namely Ravinder Kumar and the same was occupied by the Lovish Handa who happens to be the son of Ashwani Handa.

5. On the other hand, learned counsel for respondents-landlords submits that once PW5-Ashwani Handa was cross-examined at length by the petitioner-tenant through his counsel, no such

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Objection qua this affidavit in affirmative could have been raised now at the revisional stage. He also relies upon the findings recorded by the First Appellate Authority wherein it has been categorically recorded that the petitioner-tenant owns different commercial properties at different places in Ludhiana and thus the order of eviction passed by the authorities below does not warrant any interference. Learned counsel further places reliance upon judgment passed by Hon'ble the Supreme Court in "**Rasiklal Manichchand Dhariwal and Anr. Vs. M/s. M.S.S. Food Products 2012(2) R.C.R. (Civil) 307**".

6. I have heard learned counsel for the parties and gone through the paper-book. I am unable to find substance in the submissions made by learned counsel for the petitioner.

7. For the purpose of dealing with the proposition argued on behalf of the petitioner it would be appropriate at this stage to reproduce the definition of evidence as laid down under Sections 3 and 137 of Indian Evidence Act, 1872 as well as Order 18 Rule 4(1) CPC:-

"3. Interpretation-clause.— In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context: —

"Court".—"Court" includes all Judges and Magistrates, and all persons, except arbitrators, legally authorised to take evidence.

"Fact".—"Fact" means and includes—

(1) anything, state of things, or relation of things, capable of being perceived by the senses;

(2) any mental condition of which any person is conscious."

"137. **Examination-in-chief.** — The examination of witness by the party who calls him shall be called his examination-in-chief.

Cross-examination. — The examination of a witness by the adverse party shall be called his cross-examination.

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Re-examination. —The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.”

ORDER 18 RULE CPC

“4. Recording of evidence.—(1) In every case, the examination-in-chief of a witness shall be on affidavit and copies thereof shall be supplied to the opposite party by the party who calls him for evidence:

Provided that where documents are filed and the parties rely upon the documents, the proof and admissibility of such documents which are filed along with affidavit shall be subject to the orders of the Court. “

8. On a conjoint and meaningful reading of the aforementioned provisions, one can easily make out that the examination-in-chief of a witness can be recorded through an affidavit with copy thereof supplied to the opposite party. The aforementioned provisions nowhere lay down any specific procedure or requirement as regards the manner of tendering of such affidavit of its affirmation by the deponent-witness. Once the affidavit qua examination-in-chief has been submitted before the Court by the witness, the same forms part of record and no further legal formalities are required to be performed by the Court except for supplying the copy of the same to the opposite party for cross-examination of the said witness. My aforesaid view also finds support from the decision made by Hon’ble the Supreme Court in “**Rasiklal Manichchand Dhariwal and Anr. Vs. M/s. M.S.S. Food Products 2012(2) R.C.R. (Civil) 307**”. Relevant portion of Para 57 thereof is reproduced hereunder:-

“This Court said, "presence of a party during examination-in-chief is not imperative. If any objection is taken to any statement made in the affidavit, as for example, that a statement has been made beyond the pleadings, such an objection can always be taken before the court in writing and in any event, the attention of the witness can always be drawn while cross-examining him". The prejudice principle was accordingly applied and the Court said that the defendant would not be prejudiced in any manner whatsoever if the examination-in-chief is taken on an affidavit and in the

event the defendant desires to cross-examine the said witness he would be permitted to do so in the open court. For all this, it cannot be said that in Ameer Trading Corpn. Ltd.¹⁰, it has been laid down as an absolute rule that in the appealable cases though the examination-in-chief of a witness is permissible to be produced in the form of affidavit, such affidavit cannot be treated as part of the evidence unless the deponent enters the witness box and confirms that the contents of the affidavit are as per his say and the affidavit is under his signature. Where the examination-in-chief of a witness is produced in the form of an affidavit, such affidavit is always sworn before the Oath Commissioner or the Notary or Judicial Officer or any other person competent to administer oath. The examination-in-chief is, thus, on oath already. In our view, there is no requirement in Order XVIII Rule 5 that in appealable cases, the witness must enter the witness box for production of his affidavit and formally prove the affidavit. As it is such witness is required to enter the witness box in his cross-examination and, if necessary, re-examination. Since a witness who has given his examination-in-chief in the form of affidavit has to make himself available for cross-examination in the witness box, unless defendant's right to cross examine him has been closed, such evidence (examination-in-chief) does not cease to be legal evidence."

9. In the present case, admittedly upon submission of the affidavit by PW-5-Ashwani Handa, the copy of the said affidavit was duly supplied to the petitioner-tenant who even cross-examined the said witness on five different occasions before the Rent Controller without raising any objection qua the form of tendering of affidavit or about the same having been exhibited and made part of the record and thus, at this stage the petitioner was estopped from raising any such hypertechnical plea which could at best be termed as an irregularity but not an illegality. The defect, if any, could have been cured in case of objection been raised at an appropriate stage by the petitioner cannot be permitted to take advantage for having waived of the same.

10. Moreover, even if the objection raised by the petitioner-tenant at this revisional stage as regards the admissibility of the affidavit

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regarding examination-in-chief of PW5-Ashwani Handa is taken into consideration, the same at best can be treated to be an error on the part of the Ld. Rent Controller which carrying out procedural aspects and as per the settled principles of jurisprudence, no party can be made to suffer on account of any bona fide error committed by the Court/Authority. If at all, the affidavit of PW-5 submitted by him in his examination-in-chief was required to be taken on record through a statement made by PW-5 in this regard, the same was in fact to be performed by the Rent controller and thus the respondent-landlord cannot be made to suffer for any such bona fide omission.

11. Further, on merits, the subsequent event of eviction of shop situated at the third floor of the demised premises even does not support the case of the petitioner-tenant as the requirement as pleaded by the respondents-landlord has been for the first floor of the property as the respondents-landlord is running a jewellery shop on the ground floor of the premises. Even otherwise, the respondents-landlord is the best judge of his requirement or bona fide need and cannot be dictated terms by the petitioner-tenant who as per the uncontroverted findings recorded by the Appellate Authority owns different commercial properties in the same vicinity and thus cannot question the cause of the respondent-landlord.

12. In view of the discussions made hereinabove, I do not find any merit in the present petition and the same is thus dismissed.

13. Pending applications if any shall also stand disposed of.

09.08.2023
tejwinder

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>