

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.R. No.3715 of 2019 (O&M)

Date of Order:15.11.2023

Sham Lal and another

.Petitioners

Versus

Veena Jain

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Aakash Singla, Advocate
for the petitioners.**

**Mr. Priyanshu Kamra, Advocate
for the respondent.**

ANIL KSHETARPAL, J

1. The petitioners herein are the tenants. The respondent-landlady has filed a petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949, seeking ejectment of the petitioners on various grounds including the bonafide necessity of her son Sh. Stinu Jain. It has been asserted that Sh. Stinu Jain is not settled in life and therefore, he wishes to earn his livelihood by starting his business. On behalf of the landlady, Sh. Stinu Jain appeared as AW2. He tendered his affidavit in lieu of examination-in-chief and thereafter an opportunity was given to the learned counsel representing the tenants to defend the case. Ultimately, the parties concluded their evidence. At this stage, the respondent-landlady realised an inadvertent mistake. It was noticed that Sh. Stinu Jain was authorised to appear on behalf of the landlady through a registered Power of Attorney, however, the assertion in that regard has neither been incorporated in the affidavit nor produced in evidence. Thus, an application under Section 151 CPC read with Section 137 of the Indian Evidence Act was filed, which has

been allowed by the trial Court. The correctness of the aforesaid order has been challenged in this revision petition.

2. The learned counsel representing the petitioners contends that it would amount to de-novo proceedings and the application cannot be allowed casually. He submits that the power of attorney was in the knowledge of Sh. Stinu Jain, however, he did not produce the same. He submits that the lacuna cannot be allowed to be filled in when the case is ripe for arguments. He relies upon the following judgments passed by the courts in **Smt. M.M.Amonkar vs. Dr. S.A.Johari, (1984) 2 SCC 354**, **Surjit Kaur and another vs. Pritam Singh and others, 2004(1) R.C.R.(Civil) 402** and **M/s Bagai Construction Thr. Its Proprietor Mr. Lalit Bagai vs. M/s Gupta Building Material Store, (2013) 14 SCC 1**.

3. This court has considered the submissions of the learned counsel representing the petitioners.

4. It is well settled that the rules of procedure are handmaid of justice. The rules of procedure cannot be permitted to be utilized to scuttle the interest of justice which is paramount. The courts are established to deliver the substantive justice to the parties while making a sincere attempt to follow the procedure. However, the procedure cannot be placed at a higher pedestal than substantive justice which is the ultimate aim of the courts. In this case, Sh. Stinu Jain is none else but the son of the landlady. The eviction of the petitioners (tenants) has been sought on the ground of necessity of Sh. Stinu Jain. He has already appeared in evidence. However, to avoid any technical objection this application was filed because the assertion with respect to power of attorney was not incorporated in his affidavit filed in evidence. The Rent Controller in exercise of inherent

powers has permitted the respondent to file fresh affidavit. Order XVIII Rule 16 CPC also permits the courts to recall any witness.

5. As regards the first argument of the learned counsel representing the petitioners, it may be noted that there will be no *denovo* proceedings as Sh. Stinu Jain would tender his affidavit in examination-in-chief and the petitioners shall have opportunity to cross examine the witness. From the reading of the order, it is evident that the same has not been passed in a casual manner. The court has examined the facts of the case and passed a detailed order permitting the landlady to re-examine Sh. Stinu Jain. The landlady has been penalized with a cost of Rs.15,000/-. Hence, the order cannot be said to have been passed in a casual manner.

6. As regards the second argument of the learned counsel representing the petitioners that the power of attorney was in the knowledge of the landlady and her son, it may be noted that there are certain inadvertent errors made by the landlady which are curable. The court should always make an attempt to cure the defects rather than deciding the cases on technicalities. It is the case of the landlady that there is an inadvertent mistake.

7. This court has carefully read the judgment passed in **Smt. M.M.Amonkar's case (supra)**. In the aforesaid case, the court examined the scope of Order XVIII Rule 17 CPC. In the facts of the aforesaid case, the Court found that the witness was not required to be re-called. Hence, the aforesaid judgment has been decided in the peculiar facts of the case. In **Surjit Kaur and another's case (supra)**, the Court found that re-examination of witness to fill up the lacuna is not permissible. In fact, the Order XVII Rule 17 CPC also provides for re-call of the witnesses. In this case, the

court has permitted re-examination which is not provided in the Act. Therefore, the order is modified and the landlady is permitted to recall the witness.

8. The last judgment relied upon by the learned counsel in M/s Bagai Construction's case (supra), the court after hearing the arguments on several dates of hearing, reserved the judgment. The application was filed subsequently. In those facts the court did not permit recall of the witness.
9. Keeping in view the aforesaid facts, the judgments relied upon by the learned counsel representing the petitioners are not applicable.
10. With these observations, the revision petition is dismissed.
11. All the pending miscellaneous applications, if any, are also disposed of.

November 15, 2023
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(ANIL KSHEETARPAL)
JUDGE

Whether speaking/reasoned

Whether reportable

:YES/NO

:YES/NO