

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

**CR-3811-2023(O&M)**  
**Decided on:-17.08.2023**

Pawan Kumar

....Petitioner..

VS.

Vinod Dutt Sharma

....Respondent.

**CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA**

Present: Mr. A.P. Kaushal, Advocate for the petitioner.

Mr. Abhinav Gupta, Advocate for the respondent.

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**HARKESH MANUJA J. (Oral)**

1. By way of present revision petition, challenge has been laid to an order dated 20.05.2023, passed by Rent Controller, Ludhiana, whereby an application filed at the instance of petitioner-tenant seeking permission to send his voice samples to the Central Forensic Science Laboratory, Chandigarh for comparing the same with audio/video clip recorded in the pendrive (Ex.R-1/A), was dismissed.

2. In the present case, an eviction petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as "1949 Act") came to be filed by respondent-landlord on the ground of non-payment of arrears of rent. In the written statement, petitioner-tenant took the stand that the rent was duly paid; on some occasions to the respondent-landlord and on few others to his son. In this regard, petitioner-tenant also relied upon one video-audio recording pertaining to the son of respondent.

3. Post framing of the issues, respondent-landlord appeared as

PW-1 and the said video recording in a pendrive was even put to him after the same having been played in Court with due permission. The respondent-landlord denied the petitioner to be the person handing over certain amount to his son; besides even disputing the voice to be of the petitioner-tenant.

4. At the time of recording of evidence of petitioner-tenant, an application was filed at his instance, seeking permission to send his voice sample to the FSL for its comparison with the voice in the aforementioned video recording in the pendrive. The said application was opposed at the instance of respondent-landlord. The learned Rent Controller vide order dated 20.05.2023, rejected the prayer made by the petitioner-tenant in the said application.

5. Impugning the aforesaid order, learned counsel for the petitioner submits that the contents of the recording (audio as well as video) go to the roots of the matter and would help the Rent Controller to adjudicate upon the controversy in a complete and effective manner. He also submits that the Rent Controller went wrong while declining the prayer made in the application by holding that the Court cannot create evidence for petitioner-tenant. As per learned counsel, the evidence was already existing in the shape of pendrive and forming part of record as Ex. R-1/A, the question was only of its proof and thus, the observation made by the Courts below was wrong.

6. On the other hand, learned counsel representing respondent supports the order passed by the Rent Controller, while submitting that the video recording in the pendrive cannot be treated to be a piece of primary evidence and thus, the same cannot be permitted to be produced or proved

on record. He also points out that even details of device or date of the recording have not been mentioned in the application and thus, the prayer made was vague.

7. I have heard learned counsel for the parties and gone through the paper book, I find substance in the submissions made on behalf of petitioner.

8. The recording (audio-video) contained in the pendrive (Ex.R-1/A) is documentary evidence under Section 3-A of the Indian Evidence Act, 1872 (for short, '1872 Act') being an electronic record and can even be treated as an admission under Section 7 thereof, however, subject to proof of its genuineness. Being an alleged document of admission relating to payment of rent to the son of the respondent-landlord it has got relevance to the controversy involved between the parties. The pendrive was even permitted to be played in Court in the presence of both the parties under the orders of the Rent Controller which was never challenged by the respondent-landlord and this fact assumes significance in terms of the relevance of the said recording. Moreover, having played the pendrive in the Court, the same was even put to respondent while he appeared as PW-1 and was made part of record as Ex.-R-1/A along with an affidavit/certificate submitted by the petitioner-tenant, under Section 65-B of the 1872 Act as Ex. R-2.

9. Thus, once the said pendrive which already formed part of the judicial record and was even put to respondent-landlord while he appeared as PW-1, who disputed the voice therein to be that of petitioner-tenant, it was highly unjustified and too technical, to decline the petitioner to send his

voice sample to the CFSL, so as to get those compared with the voice recorded in the pendrive Ex.R-1/A. On account of denial-dispute having been raised by the respondent, petitioner intends to bring his own substantive evidence so that the pendrive (Ex. R-1/A) becomes admissible in evidence subject to its probative value to be considered by the Court below at an appropriate stage.

10. The aforementioned evidence i.e. Ex. R-1/A is even going to help the Rent Controller while carrying out complete and effective adjudication of the controversy involved between the parties. Rather than adopting hair-splitting technicalities, it would be in the interest of justice to allow the petitioner to send his voice sample to CFSL for comparison so as to bring on record substantive evidence about identifying the voice of person speaking. No doubt, the admissibility as well as the evidentiary value thereof shall always be the subject to the provisions of 1872 Act, which shall be seen by the learned Rent Controller at the time of production of report by the Central Forensic Science Laboratory or at the time of final adjudication.

11. Resultantly, in view of the discussion made herein above, the order dated 20.05.2023 passed by the learned Rent Controller is hereby set aside and the petitioner-tenant is permitted to send his voice sample to the Central Forensic Science Laboratory, Chandigarh for comparison with the audio/video recorded in the pendrive Ex.R1/A.

12. Accordingly, petition stands allowed.  
Pending application(s), if any, shall stand(s) disposed of.

17.08.2023  
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(HARKESH MANUJA)  
JUDGE

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