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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of Decision: September 20, 2023

Om Parkash

...Petitioner

Versus

Krishan Lal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Priyanshu Kamra, Advocate,
for the petitioner.

Mr. K.B. Raheja, Advocate,
for respondent No. 1.

SANJAY VASHISTH, J.

1. By way of present Civil Revision petition, petitioner-tenant has challenged order dated 31.08.2023 (Annexure P-5), passed by learned Rent Controller, Abohar, whereby application filed by respondent No. 1-landlord for appointment of Building Expert to examine/inspect and submit report regarding the age, condition and collapsed portion of the building in question, has been allowed.

Here-in-after, parties to the *lis* shall be referred to their original position in the rent petition.

2. Learned counsel for the tenant submits that filing of the application (Annexure P-3) by the landlord itself shows that the evidence is sought to be procured by him by collecting the same through Court order and, therefore, it further shows that eviction petition had been filed by the landlord

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without there being any proper cause of action alongwith relevant evidence for the same. Learned counsel further refers to the order dated 11.11.2022 (Annexure P-2)[in the said order, date of order has wrongly been typed as ‘11.11.2021’], whereby issues were framed by fixing a date for evidence of the landlord for 16.01.2023. Zimine orders appended with the present petition also shows that the landlord failed to produce any witness on 16.01.2023, 06.03.2023, 09.05.2023 and again on 17.05.2023. Thereupon, application in question was instituted by the landlord on 17.05.2023. Thus, learned counsel submits that it is a clear case, where the landlord has moved application for the purpose of creation of evidence in his favour through the Court order.

3. Notice of motion.

4. At this stage, Mr. K.B. Raheja, Advocate, has put in appearance on behalf of the landlord (respondent No. 1 herein) and insists that he is ready with arguments alongwith case law.

Learned counsel submits that first of all present revision petition is not maintainable because as per settled law, an order of appointment of Local Commissioner, under Order XXVI Rule 9 CPC, is not revisable. In support of his submission, Mr. Raheja has referred to and placed reliance on the judgments passed in the cases of Prem Chand v. Randhir Singh, 2017 (3) R.C.R. (Civil) 167; Rajiv Kumar Batra v. Kashmiri Lal Sika, 2010 (6) R.C.R. (Civil) 37; Bant Singh alias Balwant Singh and another v. Raghubir Singh and others, 2008 (4) R.C.R. (Civil) 260; and Balwinder Kumar and others v. Om Parkash and others (CR-533-2020, decided on 06.01.2023).

Mr. K.B. Raheja further submits that impugned order dated 31.08.2023 (Annexure P-5) has been passed by learned Rent Controller by invoking powers under Order XXVI Rule 10-A CPC, thus, the same is sustainable, keeping in view the fact that aforementioned judgments cited by him are fully applicable in the facts and circumstances of the present case.

5. In response to the submissions of the landlord, learned counsel for the tenant has argued in rebuttal by submitting that judgments cited by the landlord are not even remotely applicable to the facts of the present case because even provision for appointment of local commissioner is not for enabling the party moving application to get the evidence created through Court order. In support of his submissions, learned counsel for the tenant has placed reliance on the judgments passed by this Court (Punjab and Haryana High Court) in the cases of Harpreet Singh v. Gurpreet Kaur and others (CR-5092-2022, decided on 11.11.2022) and Subhash Chand v. Management Committee, Arya College, Panipat (CR-163-2014, decided on 14.01.2014).

6. I have heard learned counsel for the parties as well as gone through the revision petition, application filed by the landlord, reply thereto, and also other relevant documents appended with the present revision petition.

7. First of all, this Court would refer to the order passed by the learned Rent Controller on 11.11.2022 (Annexure P-2), vide which the following issues were framed:-

“1. Whether the petitioner is entitled for ejectment of the respondents from the shop in question? OPP

2. *Whether the building is not fit for human habitation and is in dilapidated condition? OPP*
3. *Whether the present petition is not maintainable in the present form? OPR*
4. *Whether the petitioner has got no cause of action or locus standi to file the present petition? OPR*
5. *Relief.”*

As per Issue Nos. 1 and 2, onus has been put upon the landlord to prove the same by leading required evidence, i.e. (i) as to whether landlord is entitled for ejectment of the respondents from the shop in question; and (ii) as to whether building in question is not fit for human habitation and is under dilapidated condition.

8. Undoubtedly, eviction petition has been filed by the landlord by taking plea in this regard. Therefore, issues were framed by putting onus to prove the same on the landlord. In other words, there was a cause of action with the landlord and the supporting evidence thereto for the purpose of proving the same before the Court while instituting the application/petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949.

9. Here is a situation that after framing of the issues on 11.11.2022, landlord availed four opportunities to discharge his onus qua Issue Nos. 1 and 2, by way of producing witnesses or leading relevant evidence in this regard. However, no evidence was led by him on 16.01.2023, 06.03.2023, 09.05.2023 and even on 17.05.2023. Instead of leading evidence on 17.05.2023, landlord filed application (Annexure P-3), for appointing building expert to examine/inspect and submit report regarding the age, condition and collapsed

portion of the building in question.

In other words, such application is moved by the landlord because he failed in bringing in any evidence with regard to the age of the building, condition of the building and factual position of the collapsed portion of the building in question. Therefore, application (Annexure P-3) was moved on 17.05.2023, in which learned Rent Controller passed impugned order dated 31.08.2023 (Annexure P-5), by invoking power under Order XXVI Rule 10-A CPC, for the purpose of adjudication of the case, and thus, allowed the application.

10. This Court has gone through the contents of the application (Annexure P-3), reply thereto (Annexure P-4) and impugned order dated 31.08.2023 (Annexure P-5) and finds that nowhere in the application, landlord has pleaded for appointment of Local Commissioner or even asked the Rent Controller to invoke its power under Order XXVI Rule 10-A CPC. Rather, nowhere it is pleaded that ***‘any commission be appointed as this Court thinks fit to inquire into such question and then to report to the Court’***. There is no document or fact available on record to assume that the Rent Controller had any reason to invoke power under Order XXVI Rule 10-A CPC at the stage of leading of evidence at the instance of landlord. Rather, this Court is of the view that allowing of the application even contrary to the parameters or the prayer made in the application, amounts to creation of evidence to discharge the onus, which was upon the landlord, for proving Issue Nos. 1 and 2.

11. Undoubtedly, power under Order XXVI Rule 10-A CPC is

available with the Trial Court/Rent Controller. But said power could not be exercised for the purpose of creation of evidence, which perhaps is not in the possession of the landlord at the time of filing of the eviction petition.

12. The judgments relied upon by learned counsel for the landlord are not applicable to the facts and circumstances of the present case because in the application (Annexure P-3) itself, there was no prayer for appointment of Local Commissioner and the order passed by Rent Controller would practically mean, only to create evidence in support of Issue Nos. 1 and 2, the onus to discharge of which was on the landlord.

13. Even in the case of **Harpreet Singh (supra)**, referred by learned counsel for the tenant, a Co-ordinate Bench of this Court, after noticing the Division Bench judgment rendered in the case of **Pritam Singh v. Sunder Lal**, 1990 (2) PLR 191, has observed as under:-

.....At the outset, it would be pertinent to notice here that the Division Bench of this Court in “Pritam Singh vs. Sunder Lal”, 1990 (2) PLR 191, has held that a revision against an order refusing to appoint a Local Commissioner would not lie as it is the discretion of the Court to appoint a commissioner and in case the Court refuses to appoint a commission, then, no right of any party can be said to have been prejudiced. Even otherwise, a party cannot be allowed to collect evidence through the Court. Each party has to lead evidence in support of its case. The parties cannot certainly be allowed to lean on the Courts for the same.”

Taking a similar view in the case of **Subhash Chand (supra)**, it was held by this Court (Punjab and Haryana High Court), as under:-

“ Petitioner has filed this petition challenging the order dated 14.11.2013 whereby application moved by him for appointment of Local Commissioner was dismissed by the Rent

Controller.

Respondent has filed a petition under Section 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1973 seeking ejectment of the petitioner. During the pendency of the petition, petitioner moved an application for appointment of Local Commissioner for spot inspection and report as to whether there was sufficient open land and constructed building for the Management Committee, Arya College. Learned Rent Controller while dismissing the application has held as under:-

“After hearing the arguments advanced by the ld. counsel for the parties and perusal of the record, it is observed that by way of this application, the applicant/respondent has sought spot inspection of the property by the court or a Local Commissioner on the ground that there is sufficient open land and constructed buildings for the Managing Committee, Arya College, and there is no personal necessity on his part as claimed. However, application in hand deserves to be dismissed as it is for the parties to prove their case by leading evidence independently and no Local Commissioner can be appointed for the purpose of collecting evidence. Further, perusal of the file would show that evidence of petitioner has been concluded and witnesses of respondent have also been examined. Thus, in view the above discussion, no case is made out to allow the application and the same is dismissed. To come up on 29.11.2013 for R. Ws, subject to last opportunity.”

The reasons given by the learned Rent Controller while dismissing the application are sound reasons. The parties have to lead their independent evidence in support of their respective pleas. Local Commissioner cannot be appointed to collect evidence on behalf of the petitioner.

Hence, no ground for interference is made out.

Dismissed.”

14. Taking into consideration the totality of the facts and circumstances of the present case and submissions addressed and recorded

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hereabove, I am satisfied with the contentions addressed by learned counsel for the tenant that, in fact, impugned order dated 31.08.2023 (Annexure P-5) has resulted into creation of evidence in favour of the landlord.

15. In view of above discussion, present revision petition is allowed. Accordingly, impugned order dated 31.08.2023 (Annexure P-5), is set aside.

16. Before parting with the judgment, I would leave it open for the Rent Controller to invoke power under Order XXVI Rule 10-A CPC, at an appropriate stage, in accordance with law, if so required for the purpose of appointment of Local Commissioner.

17. With the above observations, present petition is allowed and thus stands disposed of.

(SANJAY VASHISTH)
JUDGE

September 20, 2023

Pk Kapoor

Whether Speaking/Reasoned: ✓YES/NO

Whether Reportable: ✓YES/NO