

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

126

CR-138-2024
Decided on: 11.01.2024

ANIL GUPTA

...Petitioner

Versus

ANIL KUMAR GUPTA AND OTHERS

...Respondents

CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr. Manpreet Singh Longia, Advocate
for the petitioner.

RITU TAGORE, J. (Oral)

1. Petitioner has assailed the order dated 11.12.2023 (Annexure P-8), in which learned Rent Controller, Chandigarh in a Rent Petition No.262 of 2015 titled as ‘Anil Kumar Gupta Vs. M/s Natraj Enterprises and others’ considered the cross-examination of Avinash Gupta (PW-4) on behalf of petitioner as Nil.
2. Learned counsel for the petitioner, while referring to daily (zimini) orders passed by learned Rent Controller, Chandigarh in the captioned case available in the paper book, submits that petitioner has consistently conducted the proceedings without wasting the Court’s time. There has never been any lapse on the part of the petitioner, except for seeking adjournment on one occasion. Learned counsel states that Avinash Gupta (PW-4) has testified in the capacity of Special Power of Attorney Holder of respondent-landlord who further executed a GPA in favour of one Ms.Manju Gupta. The aforesaid witness is indeed appearing in the capacity

of a landlord; therefore, his cross-examination is very crucial for the just and complete decision in the case specially considering the pleadings raised by the petitioner. To support his submissions, learned counsel for the petitioner referred to Annexure P-6, the affidavit of Avinash Gupta (PW-4), wherein he deposed that he is a special Power of Attorney of Anil Gupta (respondent No.1-landlord), authorized to defend and pursue all rent petitions and other cases as such on his behalf. He is well conversant with the facts of the case and is competent to depose.

3. The learned counsel for the petitioner argues that the assertions and asseverations made by said Avinash Gupta in his affidavit, tendered by way of his evidence, indicate that he has spoken on behalf of the respondent-landlord, substantiating the averments of the ejectment petition, filed against the petitioner and others. Learned counsel contends that it is very essential for the petitioner to conduct cross-examination on this material and important witness. If the petitioner is denied the opportunity to conduct cross-examination, it could cause serious prejudice to his rights, claimed in ejectment petition.

4. It is contended by the learned counsel that one Revision Petition No.5143 of 2023 challenging the dismissal of petitioner's application to dismiss the rent petition, is pending before the Co-ordinate Bench. Learned counsel further contends that no reason has been assigned by the Rent Controller for treating the cross-examination of Avinash Gupta (PW-4) on behalf of the petitioner as Nil. Learned counsel submits that impugned order dehors principles of procedural and natural justice, which grant the opposing party, an opportunity to elicit response from the witnesses of other party, concerning the material facts-in-issue involved in the litigation. The counsel submits that impugned order is legally flawed, as

it denies the opportunity to conduct cross-examination on the witness without assigning any reason. It is prayed that petition be allowed and impugned order be set aside.

5. In view of the petitioner's limited relief claimed in this revision, notice to the respondent-landlord (petitioner before the learned Rent Controller) is dispensed with, at this stage.

6. Annexure P-1, a copy of the petition, indicates that Anil Kumar Gupta, through his GPA Manju Gupta, filed above captioned eviction petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (for short as 'the Act') against the respondents (present petitioner and others), concerning the tenanted-premises of ground floor of SCO No.320, Sector 35-B, Chandigarh, on the grounds inter alia that respondents are in arrears of rent w.e.f. 01.01.2014 till date at the rate of Rs.4250/- per month; ii) the premises is required by the petitioner for his personal use and occupation to run restaurant; iii) the premises has been sublet to respondent No.3 by the respondents No.1 and 2 without the consent of the petitioner landlord; iv) respondents materially impaired the value and utility of the building by making material alteration and addition without his notice and respondents failed to pay the property tax/fire cess as agreed to by them in agreement.

7. Respondent No.3 filed the written statement denying the averments of the petitioner-landlord.

8. Annexure P-4, copy of order dated 07.10.2023 reveals that the present petitioner and respondent No.1 (before the learned Rent Controller), moved an application for dismissal of the rent petition against them *inter alia* pleading that there exists no landlord-tenant relationship between them and have no concern with the demised premises. The landlord-petitioner

filed the reply and contested the averments made therein. The learned Rent Controller dismissed the said application. The pendency of revision Petition bearing No.5413 of 2023 against the aforesaid order, is a matter of record.

9. Annexure P-5, the copy of the zimini order dated 06.09.2023, shows that learned Rent Controller, upon filing of written statement on behalf of present petitioner and respondent No.1, framed additional issues and posted the petition for the petitioner-landlord's evidence and cross-examination of their witnesses. Various zimini orders placed on record indicate that the petitioner has been regularly conducting the proceedings. There has been no lapse on his part, except for seeking one adjournment on 14.11.2023 to conduct cross-examination on Avinash Gupta (PW-4). The request for adjournment was granted, providing last opportunity to conclude the cross examination on the said witness

10. Apropos, here is the impugned order dated 11.12.2023, which reads as under:-

“Today, PW-3 Amrinder Singh is present and cross-examined completely. PW-4 Avinash Gupta is also present and his cross-examination is treated as nil. No other PW is present. Let, remaining PW's if any be also brought on 21.12.2023, subject to last and final opportunity. Dasti summons be also taken, if required.”

11. The careful examination of the aforesaid order reveals that PW-3 Amrinder Singh was cross-examined completely on behalf of present petitioner and other respondent. The presence of Avinash Gupta (PW-4) was also noted; however, his cross-examination was taken to be as Nil. Learned Rent Controller did not provide a reason for treating it as such on behalf of the present petitioner and other respondent No.1. The petitioner's assertion

that Avinash Gupta (PW4) is a material witness, is supported by the copy of his affidavit (Annexure P-6). Given the respondent-landlord's stance against the present petitioner, cross-examination of Avinash Gupta (PW-4) on behalf of the petitioner and other respondent No.1 (M/s Natraj Enterprises through its proprietor Anil Gupta) was very crucial to present their version. The other zimini orders placed on record do not suggest that present petitioner and other respondent ever suggested treating cross-examination of Avinash Gupta (PW-4) as Nil on their behalf.

12. It is settled principle of law that all the parties to the *lis* should be granted adequate opportunity to present their case before the Court by permitting them to lead their evidence and including right to conduct cross-examination. The basic principal of law is that the parties to litigation should conclude the suit by presenting their respective evidence before the trial Court, ensuring equal opportunities for all parties to substantiate their version.

13. Based on the facts as discussed above and in my considered opinion, learned Rent Controller committed a jurisdictional error by depriving the petitioner of his right to conduct cross-examination on Avinash Gupta (PW-4), without assigning any reasons for the same. It is trite law that before passing any order, impacting an individual's legal rights whether procedural or substantive, the authority exercising such power must provide reason(s) for the same. To ensure complete justice between the parties, I believe that petitioner should be granted an opportunity to cross-examine Avinash Gupta (PW-4). In given context, the impugned order cannot withstand judicial scrutiny and is liable to be set aside. Accordingly set aside.

14. Learned Rent Controller is directed to give one effective opportunity to petitioner to enable him to conduct cross-examination on Avinash Gupta (PW-4).
15. Before parting with this order, it is observed that since present order has been passed without giving notice to respondent-landlord, however, he would be at liberty to move an appropriate application, if has any grievance to make. It is made clear that observations made above shall not cause any prejudice to the respondent -landlord in filing any revision.
16. Accordingly, revision-petition is disposed of in above terms.
17. Pending applications, if any, also stand disposed of accordingly.

(RITU TAGORE)
JUDGE

11.01.2024
Rimpal

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