

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1388-2024

Date of Decision: 04.03.2024

ASHOK KUMAR PETITIONER
VS
MANMOHAN SINGH RESPONDENT

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Piyush Khanna, Advocate for the petitioner.

GURBIR SINGH, J. (ORAL)

1. Challenge in this petition is to the order dated 23.11.2023 passed by learned Addl. Civil Judge (Senior Division), Hoshiarpur whereby application of the respondent-landlord to prove photocopy of Rent Note dated 09.08.2006 by way of secondary evidence has been allowed.
2. Learned counsel for the petitioner has argued that the tenancy was created for a period of more than a year so rent note required compulsory registration under Section 7 1(d) of Registration Act, 1908. Since it was not registered, so same cannot be read in evidence. The said rent note is not properly stamped, so inadmissible in evidence. The document which is inadmissible in evidence by way of primary evidence then no evidence can be led to prove the said document. Reliance is placed on judgments of *Kartar Singh Vs. Mohinder Singh: 1971 AIR (Punjab and Haryana) 458* and *Sushil Kumar (now deceased) through LRs Vs. Inderjit Kohli and Ors: 2018(4) Law Herald 3428* authorities passed by this Court.
3. I have heard the submissions made by learned counsel for the petitioner.

4. Respondent-landlord has filed a petition under Section 13 of East Punjab Rent Restriction Act for ejectment of the tenant/petitioner of the shop on the ground of non-payment of arrears of rent and bonafide necessity. The tenant/petitioner filed written statement admitting the relationship of landlord and tenant between the parties. It is also admitted that there was a rent note dated 09.08.2006 and agreed rate of rent was Rs. 10,000/- per month and the tenant/petitioner has lastly paid rent at the rate of Rs. 15,500/- per month but upto the period of month of July, 2018. Since the rent note is unregistered, so there cannot be any enhancement of rate of rent @5% every year. There is no bonafide necessity of the landlord. Thereafter, landlord moved an application directing the tenant to produce the original rent note. The tenant denied that he is in possession of the same. Thereafter, an application dated 23.08.2021 has been filed for leading secondary evidence as original rent note dated 09.08.2006 is with the tenant, which he denied to have with him.

5. Section 65 of Indian Evidence Act provides for situation where secondary evidence may be given of the existence of document where original is not produced despite notice. The entire rent petition revolves around the rent note dated 09.08.2006 so the said rent note is definitely a relevant document.

6. A Co-ordinate Bench of this Court, in **Ashok Kumar vs. Sudesh Rani and another – CR-8166-2018**, decided on 21.07.2023, after examining the provisions of the Indian Evidence Act, 1872, Code of Civil Procedure, 1908 and the High Court Rules and Orders, has held that there is no provision for filing an application for permission to lead secondary evidence. The relevant extract of the said judgment reads as under :-

“4. In fact, after examining the provisions of the Indian Evidence Act, 1872, Code of Civil Procedure, 1908 and the High Court Rules and Orders, this Court in **RSA-327-1989, titled as “Madan Lal Vs. Shankar and others”, decided on 01.11.2018,** came to a conclusion that there is no provision for filing an application for permission to lead secondary evidence.

5. In Civil Revision Application No.82 of 2016, decided on 10.11.2017, Bombay High Court also held that such applications are being filed under misconception, which has now attained provisions of an epidemic. Even the Supreme Court in **Dhanpat Vs. Sheoram (Deceased) through LRs and others, 2020 SCC online SC 606** made observations in this regard.

6. In Civil Revision No.2575 of 2020, titled as **“Vinod Kumar Vs. Satbir Singh”, decided on 03.03.2021,** this Court has held as under :-

“Keeping in view the aforesaid facts, this Court is of the opinion that the order under challenge cannot be sustained. This order is declared to be inoperative. The Civil Court is directed to decide the aspect of admissibility of the secondary evidence while deciding the suit. Needless to observe that the plaintiff shall not be denied an opportunity to lead the relevant evidence. The trial court while finally deciding the case will be entitled to evaluate such evidence and decide whether the plaintiff has successfully proved the existence, validity and genuineness of the agreement to sell and the receipt thereof by way of secondary evidence.”

7. Thus, a party cannot be denied opportunity to lead relevant evidence and after recording of the evidence, the Trial Court, while finally deciding the case, would be entitled to evaluate such evidence and whether

the respondent-landlord has successfully proved the existence, validity or genuineness of the rent note, by way of secondary evidence.

8. Since the Court below has already held that the respondent-landlord is allowed to lead secondary evidence, subject to proof of existence, loss and also proof of said document, I do not find any ground to interfere in the impugned order passed by the learned Trial Court. At the final hearing, the petitioner/tenant can raise the plea that rent note is unregistered and is not properly stamped. The learned Rent Controller shall consider the plea in accordance with the law.

9. In view of the above, this revision petition is found to be without any merit and the same is accordingly dismissed.

10. Pending applications, if any, shall stand disposed of along with this judgment.

04.03.2024
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(GURBIR SINGH)
JUDGE

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