

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.127

Case No. : C. R. No.1666 of 2024

Date of Decision : March 15, 2024

Mandeep Pal Singh		Petitioner
vs.		
Surinder Singh		Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

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Present : Mr. Balbir Singh Jaswal, Advocate
for the petitioner.

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GURBIR SINGH, J. :

1. Challenge in the present revision petition, filed under Article 227 of the Constitution of India, is to the order dated 20.02.2024 (Annexure P-9), passed by learned Rent Controller, Amritsar (for brevity – Trial Court), whereby application filed by the respondent under Section 65(a) of the Indian Evidence Act, seeking permission to prove the rent deed dated 23.02.1996 by way of secondary evidence, has been allowed.
2. The brief facts of the case, necessary for proper adjudication of the present petition, are that the respondent filed an application under Section 13 of the Rent Restriction Act, 1949 (for short – the Act), seeking ejectment of petitioner from the shop, in which he was tenant, on the ground of non-payment of rent as well as personal necessity. It was averred in the application that father of the petitioner namely Kuljinder Singh was inducted as tenant in the shop in question on the basis of rent note dated 23.02.1996

5% per year. The present rate of rent was Rs.2620/- per month. It was further averred that father of the respondent Balbir Singh transferred the suit property to the respondent and his son as per transfer deed dated 31.01.2020. Thus, they became owners of the suit property and filed application for ejectment of the petitioner from the suit property. During the course of hearing on the above said application, respondent was directed to produce all the original documents, on which he was relying. However, he failed to place on record original documents in spite of sufficient opportunities granted to him to do the needful. The petitioner contested the aforesaid ejectment application on the ground that there was no relationship of landlord and tenant between the parties. The petitioner or his father was never inducted as tenant in the demised shop and the alleged rent note, if any, was forged and fabricated. The petitioner never paid any rent either to the respondent or his father.

3. Considering the pleadings of both the parties, the learned Trial Court framed issues on 12.12.2022. Even thereafter, the respondent led no evidence. Then, after a long gap, the respondent moved the application in question for leading secondary evidence to prove rent note dated 23.02.1996, which has been allowed by learned Trial Court vide impugned order dated 20.02.2024 (Annexure P-9).

4. Learned counsel for the petitioner has argued that at the time of issuing notice in the rent application, the learned Trial Court, vide order dated 24.03.2021, directed the respondent/landlord to file all the original documents, as relied upon by him in this case on or before the next date of hearing, failing which he shall be barred from relying upon those documents

but even then, rent note was not filed. The petitioner, on appearance, moved an application under Order 7 Rule 14 CPC to direct the respondent/landlord to comply with the order dated 24.03.2021 passed by the learned Trial Court. The landlord/respondent was directed to supply the copies of documents within next five working days, failing which he would be debarred from relying upon such documents. Thereafter, the petitioner filed written reply to the rent application. After framing the issues, when the case was pending for evidence of landlord/respondent, he moved an application for leading secondary evidence and earlier, there was no pleading that the rent note has been misplaced.

5. I have heard the submissions of learned counsel for the petitioner and perused the case file.

6. The learned Trial Court has passed a detailed order dated 20.02.2024, wherein pleadings of both the parties and case law cited by them have been considered. Provisions of Section 65 of the Indian Evidence Act have also been discussed. It is clear therefrom that allowing secondary evidence would aid the Court in deciding the dispute.

7. 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.”

8. Vide order dated 25.05.2022, the learned Trial Court asked the respondent/landlord to supply the copies of documents, as mentioned in the application within next five working days and further ordered that respondent would not be able to rely upon the said documents which are not placed on file or not provided to the petitioner without leave of the Court.

9. Procedure is the hand-maid to the administration of justice and is meant for advancement of justice and not to thwart the same. A party should be given full opportunity to produce the evidence, on which reliance is placed. Thus, a party cannot be denied opportunity to lead relevant evidence. Even if no application is filed to lead secondary evidence of document, even then the Court is duty bound to record evidence. The party leading such evidence is to prove existence and loss of original document. If photocopy is proved by way of secondary evidence, then Court is required to give finding if it is copy of original and to satisfy itself that possibility of tampering with the document is ruled out. After recording of the evidence, the Trial Court, while finally deciding the case, would certainly evaluate such evidence as to whether the concerned party has successfully proved the existence, validity or genuineness of the document in question, by way of secondary evidence.

10. In the case in hand, the learned Trial Court has already held that the landlord/respondent is allowed to lead secondary evidence, keeping in view the averments made in the application that original rent note was in possession of the father of the landlord and due to his old age, the said rent note was misplaced and the same could not be traced out despite best efforts.

Although there is inaction on the part of respondent that he failed to produce the original rent note when production of original rent note was sought by

petitioner but that cannot be made a ground for rejecting the application. The Courts are meant to do complete justice to the parties and both parties must be given full opportunity to prove the case.

11. In view of the above discussion, no illegality or perversity is found in the impugned order dated 20.02.2024 passed by learned Trial Court so as to warrant interference at the hands of this Court. Accordingly, this revision petition is found to be without any merit and the same is accordingly dismissed.

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

March 15, 2024
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.