

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Civil Revision No. 3687 of 2024 (O&M)
Date of Decision: 04.07.2024

Gian Sarup @ Gian Saroop
..... Petitioner

Versus

Shanti Devi (since deceased) through her legal heirs
and another
..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Prateek Sodhi, Advocate, for the petitioner-tenant.

HARKESH MANUJA, J. (ORAL)

The petitioner, by way of present petition, seeks setting aside of an order dated 30.05.2024 passed by the learned Appellate Authority, Amritsar (**for short “Appellate Authority”**), whereby an application moved on behalf of petitioner-tenant seeking removal of an affidavit of evidence filed on behalf of respondent(s)-landlord in the first appeal, stands declined.

[2] In the present case, the respondent-landlord filed an eviction petition against the petitioner, on the ground of bona fide requirement, which came to be allowed vide order dated 21.08.2015 passed by the Rent Controller, Amritsar. Aggrieved thereof, the petitioner-tenant filed *Rent Appeal No. 56 of 2017*, titled “*Gian Sarup Versus Smt. Shanti Devi and another*”; during its pendency, the petitioner moved an application seeking amendment of written statement, *inter alia*, disputing the relationship of the landlord and tenant between the parties and the same was allowed vide order dated 08.07.2016 (Annexure P-3) passed by the Appellate Authority. The parties were thereafter afforded opportunity to lead evidence and finally,

vide decision dated 24.01.2018 (Annexure P-7), the Appellate Authority allowed the appeal, while dismissing the ejectment petition filed on behalf of respondents-landlord.

[3] Aggrieved of the judgment dated 24.01.2018 (P-7) passed by the Appellate Authority, the respondents-landlord approached this Court by filing **Civil Revision No. 5849 of 2018**, titled “**Smt. Shanti Devi and another Versus Gian Sarup**”, which came to be decided vide judgment dated 01.08.2023 (Annexure P-9). The operative paras-10 to 12 thereof are reproduced hereunder:-

“10. Besides it, though the identity of tenanted premises which in fact forms part of being a portion of building comprising No. 1515/XII-10 was disputed by the respondent-tenant at the stage of first appeal, the petitioners were required to establish their identity beyond reasonable doubt that time only, yet, considering fact that the substantial rights of the parties are involved and an application seeking permission to lead additional evidence has been filed along with the present revision petition towards the proof of identity of the tenanted premises, the same needs to be allowed as the documents now sought to be produced are going to help the Court to decide the present controversy in a complete and effective manner while ascertaining the issue of identity of the property more conclusively. The petitioners would suffer serious prejudice in case their application is not allowed and they are not permitted to establish the identity of the demised premises in a decisive and definite manner, the same being the ground floor of the property purchased by the petitioners.

11. Resultantly, the present revision petition is allowed and the impugned judgment dated 24.01.2018 passed by the first appellate Court is hereby set aside and the matter is remanded so as to permit the petitioners to lead additional evidence as regards the identity of the tenanted premises and decide the matter afresh on merits as well. The

respondent-tenant shall also be granted opportunity to rebut the evidence led by the petitioners.

12. *Considering the fact that the eviction petition was filed in the year 2010, the appellate Authority is requested to decide the same within a period of one year. The parties are directed to appear before the Appellate Authority on 28.08.2023. ”*

[4] Pursuant to the aforesaid directions, the matter was remanded to the Appellate Authority, while granting liberty to the parties to lead their respective evidence as regards the identity of demised premises. In pursuance thereof, the respondents-landlord filed an affidavit of evidence attested on 12.02.2024 (Annexure P-10) in the name of Dharminder S/o late Sh. Des Raj.

[5] Soon thereafter, the petitioner-tenant moved an application for issuance of directions for deleting the said affidavit of Dharminder-AW from record, while placing reliance upon the order dated 01.08.2023 (P-9) passed by this Court and submitted that the only permission granted by this Court in its order, was to allow the respondent-landlord to lead evidence in terms of his application for additional evidence, whereby he intended to produce on record four sale deeds (Annexures A-7 to A-11) as mentioned therein. It was submitted that no other evidence at all was permitted to be led by the respondents-landlord and thus, the aforesaid affidavit of Dharminder was required to be removed / deleted from the records.

[6] The aforesaid application was contested by the respondents-landlord, however, the same came to be dismissed by Appellate Authority vide its order dated 30.05.2024.

[7] Impugning the aforesaid order dated 30.05.2024, learned counsel for the petitioner vehemently submits that the order passed by this

Court never permitted the respondents-landlord to lead any evidence, except the additional evidence already prayed for by them in their previous application filed before the first appeal and as such, no other evidence beyond that could be led on their behalf before the First Appellate Court. He also submits that the respondents-landlord have now sought to produce on record a site plan, whereas one site plan filed on their behalf was already part of the record as Ex. P-30 and thus, prayed that respondent-landlord cannot be permitted to travel beyond the order dated 01.08.2023, passed by this Court.

[8] After hearing learned counsel for the petitioner and having gone through the paper-book / relevant records, I am unable to find substance in the submissions made on behalf of the petitioner.

[9] A perusal of the order passed by this Court on 01.08.2023 (P-9) clearly reflects that while setting aside the decision dated 24.01.2018 (P-7) passed by the Appellate Authority, the matter was remanded in *toto*, while granting permission to the parties to lead additional evidence about the identity of the tenanted premises with no restrictions thereupon or limiting it to the extent of their previous application filed before the Appellate Authority only. In such circumstances, the respondents-landlord were well within their right to lead any relevant evidence on the issue of identity of the tenanted premises, *de hors* the documents relied upon them in their previous application.

[9.1] As regards the plea raised on behalf of the petitioner that a site plan already forms part of the records as Ex. P-30 and now it was impermissible on behalf of the respondents-landlord to prove another site plan, in the humble opinion of this Court, no merit can be found with the

said argument of petitioner as the respondent-landlord once having been granted permission to lead additional evidence, they are at liberty to produce and prove any such evidence, relating to merits of the controversy involved in the first appeal, which, undoubtedly, shall be subject to final scrutiny, appreciation and adjudication by the Appellate Authority at the final determination of *lis* between the parties.

[10] In view of the above, finding no merit in the present revision petition, the same is hereby **dismissed**.

[11] It may be noticed here that previously, while deciding Civil Revision No. 5849 of 2018 (*supra*), specific direction was issued by this Court to the Appellate Authority so as to adjudicate upon the appeal within a period of one year from the date of passing of the previous order, i.e. 01.08.2023 (P-9), however, so far the evidence of respondents-landlord has not even started and in such circumstances, this Court is compelled to request the Appellate Authority to adjudicate upon the appeal as soon as possible at the earliest, preferably within a period of three months from today.

[12] Nothing expressed hereinabove shall be construed as an expression on the merits of appeal.

[13] Pending miscellaneous application(s), if any, shall also stand disposed off.

July 04, 2024
'dk kamra'

(HARKESH MANUJA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No