



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-4070-2024 (O&M)

Reserved on: 22.07.2024

Date of Decision: -26.07.2024

M/S Harbir Automobiles

. . . . Petitioner

Vs.

M/s APS International Pvt. Ltd.

. . . . Respondent

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued by: - Mr. Divanshu Jain, Advocate and
Mr. Gurmohan Singh Bedi, Advocate, for the petitioner.

Mr. Ankur Bansal, Advocate, for the respondent.

DEEPAK GUPTA, J.

Petitioner herein is the respondent-tenant before the Id. Rent Controller, Chandigarh in Rent Petition No.248 of 2018 filed by the landlord M/s APS International Pvt. Ltd. (*respondent herein*). He is aggrieved by the order dated 01.07.2024 (*Annexure P10*) as passed by Id. Rent Controller, Chandigarh whereby, application of the landlord to lead additional evidence was allowed by granting two opportunities.

2. To avoid confusion, parties shall be referred as landlord and tenant.

3. Petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949, as applicable to Chandigarh, for ejectment of the tenant was filed by the landlord company in May 2018 on the ground of non-payment of rent and the personal necessity of the landlord-company. Tenant opposed the petition. Necessary issues were framed. During its evidence, the petitioner examined PW1 Ravi Kant Sawhney, Deputy General Manager, through whom the petition was filed; and one Keshav Kumar, Accounts Manager of the landlord as PW2, who were duly cross-examined and then evidence was closed by the landlord through statement of its counsel. Harbir Singh, partner of the tenant, tendered his affidavit Ex.RW1/A as his examination-in-chief. It was at this stage that the landlord moved an application seeking permission to lead additional evidence. The tenant opposed the same, but Id. Rent Controller has allowed the same by way of the impugned order.

4.1 Assailing the aforesaid order, it is contended by Id. counsel that Order 18 Rule 17A of the CPC, as was existing earlier, has since been deleted and though Section 151 CPC empowers the Court to allow additional evidence, but this can be allowed only if the proposed additional evidence either assists the court in clarifying the evidence led on the issues or leads to a just and effective adjudication.

4.2 Id. counsel contends that in the present case, PW2-Keshav Kumar, Accounts Manager, had earlier been examined, as the authorized person on behalf of Sh. Amit Gupta, Director of the landlord-company, who in turn had been authorized by the resolution of the Board of Directors dated 04.09.2019 to file any suit or to make statement before any Court and to represent the company. Id. counsel contends that the application has been moved so as to examine Amit Gupta, Director of the landlord-company only to fill-in the lacuna in the evidence of the landlord, after the tenant had already disclosed its evidence by tendering the affidavit of RW1-Harbir Singh.

4.3 Id. counsel has referred to a decision of Hon'ble Supreme Court rendered in ***K.K. Velusamy Vs. N. Palanisamy, 2011 (2) RCR (Civil) 875***, besides another decision of Hon'ble Supreme Court rendered in ***Salem Advocate Bar Association, Tamil Nadu Vs. Union of India, 2005(3) RCR (Civil) 530 (SC)***.

5.1 Refuting the aforesaid contentions, Id. counsel for the landlord (*respondent herein*) defended the impugned order and submits that it is Sh. Amit Gupta, the Director of the landlord-company, who was duly authorized by way of the Board Resolution dated 02.07.2024 to appear as a witness in the present case. It is further contended that Sh. Keshav Kumar, the Accounts Officer, who was earlier examined as PW2, could not be in a position to prove the *bona fide* necessity of the landlord and that it is only the director of the company i.e. Amit Gupta, duly authorized by board resolution, who will be in a position to prove the ground of *bona fide* necessity of the landlord-company.

5.2 It is further pointed out that application for additional evidence was moved immediately after tendering of the affidavit by Harbir Singh-tenant and that he had not been cross-examined by that time and therefore, the defence of the tenant was not disclosed.

5.3 Incidentally, counsel for the respondent-landlord has also relied upon the case of ***K.K. Velusamy (supra)***, which has earlier been referred by counsel for the tenant (*petitioner herein*).

6. I have considered submissions of both the sides and have appraised the record.

7. Relevant provision of the Code of Civil Procedure may be noticed first: Order 18 Rule 17; & 17A (before its deletion in 2002) and Section 151 CPC, read as under:

“O.18 Rule 17. Court may recall and examine witness.—The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit.

O.18 17A. Production of evidence not previously known or which could not be produced despite due diligence. [Omitted by the Code of Civil Procedure (Amendment) Act, 1999 (46 of 1999), section 27(w.e.f. 1.7.2002)]

Section 151. Saving of inherent powers of Court.—Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.”

8. Prior to its deletion in 2002, Order 18, rule 17A of the Code empowered the court to permit a party to produce (at a later stage) evidence, which he could not produce earlier, either because it was not within his knowledge or because it could not be produced when he was leading his evidence. In either case, due diligence was required to be proved

9. The scope of Section 151 CPC read with Order 18 Rule 17 CPC, in the background of deletion of Order 18 Rule 17A CPC was considered by Hon’ble Supreme Court in the case of **K.K. Velusamy (supra)**. It was observed in para No.9 of the judgment as under:-

“There is no specific provision in the Code enabling the parties to re- open the evidence for the purpose of further examination-in-chief or cross- examination. Section 151 of the Code provides that nothing in the Code shall be deemed to limit or otherwise affect the inherent powers of the Code to make such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the court. In the absence of any provision providing for re-opening of evidence or recall of any witness for further examination or cross-examination, for purposes other than securing clarification required by the court, the inherent power under section 151 of the Code, subject to its limitations, can be invoked in appropriate cases to re- open

the evidence and/or recall witnesses for further examination. This inherent power of the court is not affected by the express power conferred upon the court under Order 18 Rule 17 of the Code to recall any witness to enable the court to put such question to elicit any clarifications.”

10. Hon’ble Supreme Court in ***K.K. Velusamy (supra)*** held further that contention to the effect that Section 151 CPC cannot be used for reopening of the evidence or for recalling the witnesses, cannot be accepted as an absolute proposition, though provision of Section 151 CPC cannot be routinely invoked for reopening of evidence or recalling witnesses. After referring to plethora of precedents, Hon’ble Supreme Court summarized the scope of Section 151 CPC as follows: -

“We may summarize them as follows:-

(a) Section 151 is not a substantive provision which creates or confers any power or jurisdiction on courts. It merely recognizes the discretionary power inherent in every court as a necessary corollary for rendering justice in accordance with law, to do what is ‘right’ and undo what is ‘wrong’, that is, to do all things necessary to secure the ends of justice and prevent abuse of its process.

(b) As the provisions of the Code are not exhaustive, section 151 recognizes and confirms that if the Code does not expressly or impliedly cover any particular procedural aspect, the inherent power can be used to deal with such situation or aspect, if the ends of justice warrant it. The breadth of such power is co-extensive with the need to exercise such power on the facts and circumstances.

(c) A Court has no power to do that which is prohibited by law or the Code, by purported exercise of its inherent powers. If the Code contains provisions dealing with a particular topic or aspect, and such provisions either expressly or necessary implication exhaust the scope of the power of the court or the jurisdiction that may exercised in relation to that matter, the inherent power cannot be invoked in order to cut across the powers conferred by the Code or a manner inconsistent with such provisions. In other words the court cannot make use of the special provisions of Section 151 of the Code, where the remedy or procedure is provided in the Code.

(d) The inherent powers of the court being complementary to the powers specifically conferred, a court is free to exercise them for the purposes mentioned in Section 151 of the Code when the matter is not covered by any specific provision in the Code and the exercise of those powers would not in any way be in conflict with what has been expressly provided in the Code or be against the intention of the Legislature.

(e) While exercising the inherent power, the court will be doubly cautious, as there is no legislative guidance to deal with the procedural situation and the exercise of power depends upon the discretion and wisdom of the court, and the facts and circumstances of the case. The absence of an express provision in the code and the recognition and saving of the inherent power of a court, should not however be treated as a carte blanche to grant any relief.

(f) The power under section 151 will have to be used with circumspection and care, only where it is absolutely necessary, when there is no provision in the Code governing the matter, when the bonafides of the applicant cannot be doubted, when such exercise is to meet the ends of justice and to prevent abuse of process of court.”

11. Hon’ble Supreme Court then referred about the deletion of Order 18 Rule 17A CPC and held as under:-

“11. The Code earlier had a specific provision in Order 18 Rule 17A for production of evidence not previously known or the evidence which could not be produced despite due diligence. It enabled the court to permit a party to produce any evidence even at a late stage, after the conclusion of his evidence if he satisfied the court that even after the exercise of due diligence, the evidence was not within his knowledge and could not be produced by him when he was leading the evidence. That provision was deleted with effect from 1.7.2002. The deletion of the said provision does not mean that no evidence can be received at all, after a party closes his evidence. It only means that the amended structure of the Code found no need for such a provision, as the amended Code contemplated little or no time gap between completion of evidence and commencement and conclusion of arguments. Another reason for its deletion was the misuse thereof by the parties to prolong the proceedings under the pretext of discovery of new evidence.

12. The amended provisions of the Code contemplate and expect a trial court to hear the arguments immediately after the completion of evidence and then proceed to judgment. Therefore, it was unnecessary to have an express provision for re-opening the evidence to examine a fresh witness or for recalling any witness for further examination. But if there is a time gap between the completion of evidence and hearing of the arguments, for whatsoever reason, and if in that interregnum, a party comes across some evidence which he could not lay his hands earlier, or some evidence in regard to the conduct or action of the other party comes into existence, the court may in exercise of its inherent power under section 151 of the Code, permit the production of such evidence if it is relevant and necessary in the interest of justice, subject to such terms as the court may deem fit to impose.

13. Xxxxx

14. Neither the trial court nor the High court considered the question whether it was a fit case for exercise of discretion under section 151 or Order 18 Rule 17 of the Code. They have not considered whether the evidence sought to be produced would either assist in clarifying the evidence led on the issues or lead to a just and effective adjudication. Both the courts have mechanically dismissed the application only on the ground that the matter was already at the stage of final arguments and the application would have the effect of delaying the proceedings.

15. Xxxxx

16. We may add a word of caution. The power under section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs. If the application is allowed and the evidence is permitted and ultimately the court finds that evidence was not genuine or relevant and did not warrant the reopening of the case recalling the witnesses, it can be made a ground for awarding exemplary costs apart from ordering prosecution if it involves fabrication of evidence. If the party had an opportunity to produce such evidence earlier but did not do so or if the evidence already led is clear and unambiguous, or if it comes to the conclusion that the object of the application is merely to protract the proceedings, the court should reject the application. If the evidence sought to be produced is an electronic record, the court may also listen to the recording before granting or rejecting the application.”

[underlined portion emphasized by the court]

12. From the legal position as above, as explained by Hon’ble Supreme Court, following principles can be culled out:

- Though, after deletion of Order 18 Rule 17A, there is no specific provision in the Code to enable the parties to produce any additional evidence but Section 151 of the Code empowers the court to exercise its inherent powers to make such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the court, which includes grant of permission to produce additional evidence.
- This inherent power of the court is not affected by the express power conferred upon the court under Order 18 Rule 17 of the Code to recall any witness to enable the court to put such question to elicit any clarifications.
- For purposes other than securing clarification required by the court, the inherent power under section 151 of the Code, subject to its limitations, can be invoked in appropriate cases to re- open the evidence and/or recall witnesses for further examination.
- The deletion of the Order 18 Rule 17A does not mean that no evidence can be received at all, after a party closes his evidence.
- However, when there is a time gap between the completion of evidence and hearing of the arguments, for whatsoever reason, and if in that interregnum, a party comes across some evidence, which he could not lay his hands earlier, or some evidence in regard to the conduct or action of the other party comes into existence, the court may in exercise of its inherent power under section 151 of the Code, permit the production of such evidence, if it is relevant and necessary in the interest of justice, subject to such terms as the court may deem fit to impose.
- By exercising the discretion under section 151 or Order 18 Rule 17 of the Code, court is required to consider:
 - whether the evidence sought to be produced would either assist in clarifying the evidence led on the issues, or
 - lead to a just and effective adjudication.
- Merely because the matter has already reached at the stage of final arguments, can not be a reason to conclude that the application would have the effect of delaying the proceedings.
- The power under section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials.

- But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence, by awarding appropriate costs to the other party to compensate for the delay.
- But if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs.
- If the party had an opportunity to produce such evidence earlier but did not do so or if the evidence already led is clear and unambiguous, or if it comes to the conclusion that the object of the application is merely to protract the proceedings, the court should reject the application.
- If the evidence sought to be produced is an electronic record, the court may also listen to the recording before granting or rejecting the application.”

13. Applying the above principles to this case, it is noticed that the petition for seeking ejectment of the tenant has been filed by a company through its Deputy General Manager, Ravi Kant Sawhney. One of the grounds for seeking ejectment is the personal necessity of the landlord-company. Obviously, it is one or the other Director of the company, who can be in the best position to depose regarding the personal necessity of the petitioner-company and not any other person authorized by the Director.

14. It is no doubt true that by way of authority letter dated 04.09.2019, Sh. Amit Gupta, the Director of the Company had authorized Mr. Keshav Kumar, Accounts Manager of the Company, but it is necessary to look into contents of the said authority letter, which reads as under: -

“September 4, 2019

AUTHORITY LETTER

I, Amit Gupta, Director of APS International private Limited (a company incorporated under the Companies Act, 1956) is authorized by Board of Directors dated resolution dated 07.12.2010 to institute, prosecute and use all lawful means, actions suits or proceedings and reference to arbitration for recovery and realization of the debt and other dues or claims due to the company, to defend and contest any claim, action, suit or other proceedings against the company either pending or future, arising from the connected with its business and appear personally, to act, represent and make

statement in any office of State or Central Government or other offices, in any Court, Civil, Criminal, Revenue or High Court, Supreme Court for and on behalf of the Company. I have the authority to delegate all these powers in favour of one or more employees of the company. I hereby authorize Mr. Keshav Kumar, Accounts Manager of the Company whose Aadhar No. is 442561134024, to appear before appropriate Court in person or otherwise and present the books of accounts, balance sheets, other financial statements of the Company and to make statements related to financial matters and to do all other acts, deeds and things as may be deemed necessary on behalf of Company in relation to case filed by company against M/s Harbir Automobiles. The specimen signature of Mr. Keshav Kumar is attested below.

Specimen Signature of Mr. Keshav Kumar Sd/-

For and on behalf of

APS International Private Limited

Sd/-

Amit Gupta

Director”

15. It is, thus, clear that it is Sh. Amit Gupta, Director, who had been authorized by the Resolution dated 07.12.2010 of the Board of Directors to represent the company. Said Sh. Amit Gupta authorized Mr. Keshav Kumar, Accounts Manager, only to the extent that he could appear before any appropriate Court in person and otherwise present the books of accounts, balance-sheet & other financial statements of the company and to make statements related to the financial matters and to do all other acts, deeds and things, as may be deemed necessary, on behalf of the company in relation to the case filed by the company against M/s Harbir Automobiles. Mr. Keshav Kumar had of course been examined as PW2. Being Accounts Manager, he could be in a position to depose about the financial matters only and not about the personal necessity of the landlord-company. It is after realizing this mistake that the application for additional evidence was moved. Since the petition was for personal necessity of the landlord company, therefore, allowing of the application cannot be treated as filling in the lacuna, even though, the landlord had closed its evidence.

16. Ld. counsel for the petitioner-tenant has referred to a decision of this Court rendered in ***Nathu Ram Prem Chand Vs. Jagroop Singh***, 2014 (60) RCR (Civil) 629, wherein the witness, who had made *bahi* entries was available throughout the proceedings, but was not examined by the plaintiff and the evidence was closed. The order rejecting the application for additional evidence was not interfered by this Court by observing that proposed additional evidence was to overcome the negligence or lacunae left in the evidence.

17. In the case of ***Munna Lal Vs. Sadhu Ram and others***, 2009(33) RCR (Civil) 388, it was held by this Court that no additional evidence can be permitted by reopening affirmative evidence after closing of the evidence by the defendant and that plaintiff cannot be permitted to have another opportunity to lead evidence, simply because he had failed to prove his case. Similar view was also taken by this Court in the case of ***Parmod Kumar Vs. Bhagat Singh***, 2018 (4) PLR 741.

18. In the case of ***Ajay Singh Chaudhary and another Vs. Shiv Raj Singh (now deceased)***, 2024(1) RCR (Civil) 613, after availing several opportunities, application was moved for additional evidence one month after closing of the evidence. The same was dismissed by the Court. This Court did not intervene and rejected the petition.

19. In the case of ***Karun Kalra Vs. Geeta Verma and others***, 2021 (4) PLR 503, it was held by this Court that when the application is moved to overcome the lacuna in the earlier evidence, without explaining the delay, such a recourse is not permissible even under the inherent powers conferred under Section 151 CPC, more particularly when specific provision i.e. Rule 17A of the Order 18 has been repealed vide Civil Procedure Code (amendment) Act (46 of 1999) with effect from 01.07.2002, as inherent powers are not supposed to be exercised in the manner so as to frustrate the repealing of a specific provisions.

20. Above authorities were rendered in the peculiar facts and circumstances of those cases. Matter is required to be considered in the light of principles enunciated by Hon'ble Supreme Court, as have been discussed earlier. In this case, as has rightly been observed by the Id. Rent Controller, the tenant had not concluded his evidence. Even his cross-examination was not conducted and only the

affidavit had been tendered in evidence, which was as per the pleadings already known to the landlord. As such, no prejudice has been caused to the tenant by allowing of the application. The proposed evidence will assist the court in coming to the conclusion as to whether the necessity as projected by the landlord company is bonafide or not. Besides, the tenant has been duly compensated by way of cost of ₹3,500/-. This Court does not find any illegality in the impugned order, as production of the proposed evidence will lead the Court of Id. Rent Controller to just and effective adjudication of the matter involved i.e. the ground of personal necessity of the landlord-company.

21. As such, finding no merit in the present petition, the same is hereby dismissed.

26.07.2024

Vivek

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned?

Yes

Whether reportable?

Yes