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Gurdial Singh Vs. Gulshan Kumar

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Court : Punjab and Haryana

Decided On : Jul-26-1999

Reported in : (1999)123PLR381

Judge : S.S. Sudhalkar, J.

Acts : Code of Civil Procedure (CPC) , 1908 - Sections 115 - Order 41, Rule 27

Appeal No. : Civil Revision No. 3309 of 1999

Appellant : Gurdial Singh

Respondent : Gulshan Kumar

Advocate for Pet/Ap. : V.B. Aggarwal, Adv.

Disposition : Petition dismissed

Judgement :

S.S. Sudhalkar, J.

1. This revision petition is filed against the order dated 4.6.99 passed by Appellate Authority, Kurukshetra in Rent Appeal No. 107 of 1999. Petitioner Gurdial Singh is the respondent in the appeal. Respondent Gulshan Kumar had given an application for additional evidence in the appeal before the learned Appellate Authority. Learned Appellate Authority partly allowed the application permitting

certain additional evidence. The additional evidence permitted included copy of judgment in another ejectment petition filed by the present landlord against another tenant, copies of jamabandi, khasra girdawari and sale deed to show that the landlord is settled at different places. Ranjit Singh Lamberdar and Clerk of Sub Registrar are to be examined to prove the sale deed and the concerned Clerk of Food & Supplies Department is also to be examined with record of ration card to show that he knew how to affix signature. It is found by the appellant authority that ail this evidence except the alleged rent receipts of Surta Ram is not likely to be fabricated and that the same consists of official record.

2. The appellate Authority, therefore, allowed the present respondent to lead additional evidence which was not likely to be fabricated one. Being aggrieved by the said order the petitioner has approached this court in revision.

3. I have heard learned counsel for the petitioner.

4. Learned counsel for the petitioner has argued that the appellate authority has gone beyond its scope for allowing additional evidence and that the impugned order is illegal. He has cited the case of The Land Acquisition Officer, City Improvement Trust Board v. H. Narayanaiah and Ors., 1976(4) S.C.C. 9. In that case it was held that the High Court had not complied with provisions of Order 41 Rule 27 of the C.P.C. which require that an appellate court should be satisfied that the additional evidence is required to enable it either to pronounce judgment or for any other substantial cause.

5. In the case of K. Venkatramiah v. A. Seetharma Reddy and Ors., A.I.R. 1963 S.C. 1526 it has been held that under Rule 27(1) of Order 41 of the Code the appellate Court has the power to allow additional evidence not only if it requires such evidence to enable it to pronounce judgment, but also for any other, substantial cause. It has also been held that there may be cases where even though the court finds that it is able to pronounce judgment on the state of record as it is, and so it cannot strictly say that it requires additional evidence to enable it to pronounce judgment, it still considers that in the interest of justice something which remains obscure should be filled up so that it can pronounce its judgment in a more satisfactory manner. Such a case will be one for allowing additional

evidence for any other substantial cause under Rule 27(1)(b) of the Code. It can be seen that the judgment in the case of K. Venkataramiah v. A. Seetharma Reddy and Ors. (Supra) is a judgment of five Judges and the judgment in the case of Land Acquisition Officer v. H. Narayanaiah and Ors. (supra) is of three Judges.

6. In the case of State of UP. v. Ram Chandra Trivedi, A.I.R. 1976 Supreme Court 2547, it has been held that in case there is conflict between the views expressed by larger and smaller benches of the Supreme Court, the proper course for a High Court in such a case is to try to find out and follow the opinion expressed by larger Benches of the Supreme Court in preference to those expressed by smaller Benches of the court which practice, hardened as it has into a rule of law, is followed by the Supreme Court itself. Therefore, the principles laid down in the case of K. Venkataramiah v. A. Seetharama Reddy (Supra) shall be applicable. Moreover learned appellate authority had considered the fact that additional evidence which is allowed by it is one which is not likely to be fabricated and is consist of official records. It has also awarded Rs. 1000/- as costs.

7. In view of the above, I do not find any reason to interfere with the order of the appellate authority. This revision petition is without merit and is dismissed.

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