

Dial Chand Vs. Anant Ram

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Court : Punjab and Haryana

Decided On : Apr-09-2003

Reported in : (2004)136PLR16

Judge : Satish Kumar Mittal, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 18 Rule 17A

Appeal No. : Civil Revision No. 391 of 1994

Appellant : Dial Chand

Respondent : Anant Ram

Advocate for Pet/Ap. : A.K. Mittal, Adv.

Disposition : Petition dismissed

Judgement :

Satish Kumar Mittal, J.

1. Dial Chand petitioner (plaintiff before the trial Court) has filed the instant revision petition against the order dated 20th January, 1994, vide which an application under Order 18 Rule 17A of the Code of Civil Procedure (hereinafter referred to as 'the Code') filed by the respondent Anant Ram (defendant before the trial Court) for additional evidence has been allowed by the learned trialCourt.

2. The brief facts of the case are that respondent, who is the landlord filed an ejectment application against the petitioner-tenant on the ground of non-payment of rent under the provisions of East Punjab Urban Rent Restriction Act, 1949. In that ejectment application, he claimed the rent of the demised premises at the rate of Rs.450/- per month. The petitioner-tenant tendered the arrears of rent at the aforesaid rate under protest by claiming the rate of rent of the demised premises to be only Rs.150/- per month. After tender of the rent on the first date of hearing, the respondent-landlord did not press the said ejectment petition and the same was dismissed.

3. Subsequently, the petitioner filed suit for recovery of the alleged excess rent paid by him in the aforesaid ejectment petition on the allegation that the rate of rent of the demised premises was only Rs.150/- per month, whereas the respondent-landlord has illegally charged the arrears of rent from him at the rate of Rs.450/- per month. In the suit, the petitioner has proved on record the Income Tax return of the respondent-landlord for the year 1984-85 as Ex.PW3/A, in which he has shown the income from rent as Rs. 1,800/- per annum. Thereafter, the respondent-landlord led his evidence and the same was concluded and closed on 7th September, 1993. After that, on 13th September, 1993, he filed an application under Order 18 Rule 17A of the Code for permission to lead additional evidence to prove the detail of the Income Tax return Ex.PW3/A to show that the amount of Rs. 1,800/- reflected in the said Income Tax return does not pertain to the shop in question. For that purpose, he wanted to examine the Record Keeper of the Income Tax Office, Muktsar with records to prove and explain that the amount shown in the income Tax return Ex.PW3/A pertain to some different premises. The said application filed by the respondent has been allowed by the learned trial Court vide the impugned order. The learned Court, while allowing the aforesaid application has observed that though the proposed additional evidence was within the knowledge of the respondent yet he could not produce the same after due diligence because the witness produced by him was not knowing English. The learned trial Court has also observed that the proposed additional evidence is material and essential for the proper and effective determination of the controversy as in the aforesaid Income Tax return Ex.PW3/A, only the amount of rent has been mentioned but no detail of the premises has been given to connect the said

amount with the shop in question.

4. Sh. A.K. Mittal, learned counsel for the petitioner, while assailing the aforesaid impugned order, has submitted that the learned trial court has allowed the application for additional evidence without looking into the fact that the application does not fulfil the requirements laid down under Order 18 Rule 17A of the Code. He submitted that once the respondent closed his evidence just a week earlier to the filing of application, he cannot be permitted to lead additional evidence, particularly when he was having knowledge of such evidence. In support of his contention, learned counsel relied upon the decision of this Court in *Bakhshish Singh and Anr. v. Resham Singh*.

5. I have considered the submissions made by learned counsel for the petitioner. In my opinion, there is no merit in the instant revision petition. Once the trial court has allowed the application for additional evidence by observing that the proposed additional evidence is material, for effective determination of the controversy, then this Court, while exercising its revisional jurisdiction under Section 115 of the Code, should not interfere in the discretion exercised by the trial Court, until and unless a manifest injustice is caused to a party, against whom the order has been passed. In the instant case, the dispute is about the rate of rent. The Income Tax return Ex.PW3/A, as observed by the learned trial Court, does not indicate that the amount mentioned therein as Rs. 1,800/- pertain to the demised premises. This fact will be explained by the official of the Income Tax Department, who will bring the entire record of the assessee to establish that to which premises the amount pertains. It is always essential for doing justice to the parties that every party be afforded full opportunity to lead evidence in support of its case. Merely because evidence of the respondent was closed, the application for additional evidence filed by him cannot be declined. Therefore, I do not find any manifest infirmity or illegality in the impugned order, which necessitate the setting aside of the same. The decision cited by learned counsel for the petitioner is not applicable to the facts and circumstances of the present case.

6. In view of the aforesaid discussion, the present revision petition is dismissed being devoid of merit

