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Court : Punjab and Haryana

Decided On : Aug-18-2006

Reported in : (2006)144PLR391

Judge : Hemant Gupta, J.

Appeal No. : Civil Revision No. 4860 of 2004

Appellant : Chand Singh

Respondent : Kartar Singh

Advocate for Def. : Ashwani Chopra, Sr. Adv. and; Rajbir Singh, Adv.

Advocate for Pet/Ap. : Ashok Singla, Adv.

Disposition : Petition allowed

Judgement :

Hemant Gupta, J.

1. The challenge in the present revision petition is to the order passed by the learned trial Court on 29.09.2004 whereby an application filed by the plaintiff-petitioner for producing additional evidence or rebuttal evidence to rebut the rent note produced in evidence by the defendant was dismissed.

2. The plaintiff has filed a suit for recovery of excess rent paid. It is the case of the petitioner that rent was Rs. 1000/- per month whereas, as per respondent, agreed rent was Rs. 600/- per month. The plaintiff has led his entire evidence but in defence the defendant has produced rent note Exhibit D-1. It is the case of the petitioner that since such rent note has been produced in evidence by the defendant for the first time, therefore, he needs an opportunity to rebut the said evidence by way of additional evidence or by way of rebuttal evidence. It is also pointed out that the defendant has not relied upon such rent note in the written statement nor the plaintiff was confronted with such rent note when he appeared in the witness box as his own witness.

3. On the other hand, it is the case of the respondent that such rent note was referred to in the earlier eviction petition and, therefore, the stand of the petitioner that he was not aware of the rent note is not tenable.

4. Admittedly, in the present proceedings, there is no reference of the rent note. Such rent note was not put to the petitioner when he appeared in the witness-box as his own witness. Such rent note was produced by the defendant in his evidence. Therefore, the plaintiff is entitled to rebut the evidence so produced by the defendant. It may be termed as additional evidence or rebuttal evidence but the fact remains that the plaintiff cannot be taken by surprise. Consequently, I find that the order passed by the learned trial Court on 29.09.2004 suffers from patent illegality and is not sustainable in law. Accordingly, the revision petition is allowed and order dated 29.09.2004 is set aside. The petitioner is permitted to lead evidence so as to rebut the evidence led by the defendant in respect of rent note Exhibit D-1.