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**Court : Delhi**

**Decided On : May-07-1981**

**Reported in : 20(1981)DLT46; 1981(2)DRJ164; 1981RLR440**

**Judge : Sultan Singh, J.**

**Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 17, Rule 1; [Constitution of India](#) - Article 227**

**Appeal No. : Civil Miscellaneous (Main) Appeal No. 2 of 1981**

**Appellant : A.K. Bhatia and ors.**

**Respondent : Viman Engineering Co. Pvt. Ltd. and ors.**

**Advocate for Pet/Ap. : A.K. Luthra and; S.S. Saluja, Advs**

**Judgement :**

**Sultan Singh, J.**

(1) This petition under Article 227 of the [Constitution of India](#) is directed against the order dated August 5. 1980 of the Additional Rent Controller, Delhi closing the evidence of the petitioner except his own statement subject to payment of Rs. 100.00 as costs,

(2) The petitioner on July 21, 1978 filed an application for eviction of the respondent under section 14(l)(a)and(b) of the Delhi Rent Control Act, 1958 (hereinafter called 'the Act').. After the filing of written statement by the respondents, the matter was fixed for December 11, 1978 on which date arguments regarding order under section 15(1) of the Act were heard but the passing of the order the proceeding was adjourned for evidence of the petitioner to May 14, 1979. The parties Were directed to file their list of witnesses within 15 days presumably under Order 16 Rule I of the Code of Civil Procedure as amended by Act 104 of 1976. The Additional Controller intended to avail of causal leave on May 14, 1979. He, thereforee, issued notice to the parties' counsel for May 3, 1979 on which date he cancelled the date May 14, 1979 fixed for petitioner's evidence and fixed another date i.e. September 24, 1979 for petitioner's evidence. Diet money and process fee was directed to be filed within seven days. On September 24, 1979 no witness was present. List of witnesses required to be filed vide order dated April 23, 1979 was also not filed. The petitioner, however, filed another application under Order 32 Rule 3 Civil Procedure Code for appointment of a guardian-ad-litem of minor, sole proprietor of respondent No. 2. The petitioner was burdened with Rs. 40.00 as costs of adjournment. By order dated November 11, 1979 petitioner's application for appointment of guardian-ad-litem was allowed and the proceedings were adjourned to March 4, 1980. Written statement was filed on behalf of the minor respondent on March 4, 1980 and the matter was adjourned to March 31, 1980 and again it was adjourned to April 10, 1980. The Additional Controller fixed August 5, 1980 for evidence of the petitioner. On August 5, 1980 again no witness was present. Even the petitioner himself was not present. The witnesses were also not summoned by the petitioner. It was stated on behalf of the petitioner that he was not feeling well. No medical certificate in support of his illness was produced. As witnesses were neither summoned nor present, the Additional Controller closed the evidence of the petitioner.

(3) The petitioner by this petition under Article 227 of the Constitution submits that his evidence was fixed for the first time for August 5, 1980. This is incorrect. From the order sheet I find that the case was fixed for his evidence for May 14, 1979 which was changed to September 24, 1979. August 5, 1980 in the circumstances

was not the first date of hearing for recording evidence but it was the second date. The petitioner did not file any list of witnesses interms of Order 16 Rule I of the Code. He never summoned any witness. No witness appeared on his behalf on any of the two dates of hearing i.e. September 24, 1979 and August 5, 1980. Order 17 Rule 1(1) of the Code reads as under :

The court may, if sufficient cause is shown, at any stage of the suit, grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit.'

(4) Under this provision the court may grant time and adjourn the bearing if sufficient cause is shown. From the record it appears that no cause was shown for adjournment of the case fixed for September 24, 1979 or August 5, 1980. A bare reading of this provision shows that adjournment should not be granted even on condition of payment of costs where sufficient cause does not exist. The court is empowered to adjourn the case where sufficient cause for adjournment is shown. In the present case no cause of any nature whatsoever was shown by the petitioner for adjournment on any of the two dates of hearing. In the circumstances it appears that the Additional Controller was justified in passing the impugned order. The learned counsel for the respondent further submits that the impugned order disallowing the adjournment is a pure question of fact and the discretion exercised by the Additional Controller cannot be interfered with under Article 227 of the Constitution. He relies upon *Meneill & Mago Ltd. v. M.E. & Mfro.* 1980 R.L.R. 17, wherein it was held that an order refusing adjournment cannot be interfered under Article 227 of the Constitution. In *Babhutmal Raichand Oswal v. Laxmibai R. Tarte and another*, : AIR 1975 SC1297 , it was observed that the High Court has no power to interfere with finding of fact like a court of appeal. As already observed the impugned order relates to the closing of the petitioner's evidence. It is a matter of discretion and a pure question of fact. The Additional Controller exercised rightly his discretion. Nothing has been brought to my notice in what manner the discretion exercised by the Additional Controller is not in accordance with law. I do not find infirmity in the impugned order. The petition is thereforee dismissed with no order as to costs.

