
(1990) 12 P&H CK 0024
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 244 of 1989

Aggarwal Bastralya

APPELLANT

Vs

Bhagwan Kunthu Nath Jain and Others

RESPONDENT

Date of Decision : 05-12-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
East Punjab Urban Rent Restriction Act, 1949 — Section 15(5)

Citation : (1991) 99 PLR 426

Hon'ble Judges : J.V. Gupta, C.J

Bench : Single Bench

Advocate : R.K. Aggarwal, for the Appellant; H.L. Sarin and Jai Shree Thakur, for the Respondent

Judgement

J.V. Gupta, C.J.—This revision petition is directed against the order of the Appellate Authority. Patiala, dated 3rd October, 1988, whereby the application for additional evidence has been allowed in appeal.

2. The respondents claiming themselves to be the landlords of the premises in dispute, filed an ejectment application against the petitioner, which was dismissed by the Rent Controller on 20th April, 1987, primarily on the ground that there was no relationship of landlord and tenant between the parties. The appeal was filed on 12th May, 1987. It was on 12th May, 1988, that an application was filed under Order 41, Rule 27 CPC for additional evidence. The said application was contested on behalf of the alleged tenant. The Appellate Authority found that the production of Mohinder Kumar Mast is requirement of the Court as if he is produced he would throw light on the facts which brought rent note/deed dated 21st August, 1976, into existence and in whose favour. According to the learned Appellate Authority it was not material if application moved for producing Mohinder Kumar Mast earlier before the Rent Controller was withdrawn by the landlord.

3. Learned counsel for petitioner submitted that this very application for

additional evidence was also filed before the Rent Controller on 1st April, 1987 but was got dismissed as withdrawn on 8th April, 1987. Thus argued the learned counsel, in these circumstances the respondent could not be allowed to lead "additional evidence by the Appellate Authority in appeal. Moreover, argued the learned counsel, the evidence sought to be produced was oral and, therefore, there was no occasion to allow the application under Order 41 Rule 27, Code of Civil Procedure.

4. On the other hand, learned counsel for the respondents submitted that it was the requirement of the Court and, therefore, there was nothing wrong to allow the additional evidence. In support of this contention reference was made to Syed Abdul Khader Vs. Rami Reddy and Others, .

5. After hearing the learned counsel for the parties, I find that there was no occasion for the Appellate Authority to allow additional evidence in appeal under Order 41, Rule 27 of the Code of Civil Procedure. Admittedly, the said application to produce Mohinder Kumar Mast was filed before the Rent Controller which was got dismissed as withdrawn later on

6. In the circumstance, the application now filed on behalf of the appellant before the Appellate Authority could not be said to be a bona fide one. The approach of the Appellate Authority in this behalf is wholly wrong and misconceived. Consequently, this petition succeeds ; the impugned order is set aside and the application for additional evidence is dismissed, but with no order as to costs.

7. Since further proceedings before the trial Court were stayed at the time of motion hearing, the parties are directed to appear before the Appellate Authority on 21st December, 1990.