

(1988) 09 P&H CK 0016
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 3784 of 1986

Firm Mohan Lal Dhanpat Rai, Cloth Merchant, Hansi	APPELLANT
Vs	
Smt. Kirno Devi and others	RESPONDENT

Date of Decision : 23-09-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27

Citation : (1988) 2 RCR(Rent) 645

Hon'ble Judges : D.V. Sehgal, J

Bench : Single Bench

Advocate : Ashok Bhan, with Mr. A.K. Mittal, for the Appellant; Yogesh Sharma, for the Respondent

Final Decision : Allowed

Judgement

D.V. Sehgal, J.—The petitioner-firm is a tenant in the premises in dispute. The respondents are the landlords. They filed an application for its ejectment before the learned Rent Controller, Hansi. An order of ejectment dated 16-2-1983 was passed against it. It then went in appeal before the learned Additional District Judge exercising the powers of Appellate Authority under the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter the "Act" in short) which appeal is still pending.

2. During the pendency of the appeal, the petitioner filed two applications, the first one being under Order 41 Rule 27 read with Section 151, CPC to produce on record the following documents:-

- (i) 3 copies of entries in assessment register of Municipal Committee Hansi for the year 1974-75, for 1979-80 and for 1984-85 (relating to shop indispute);
- (ii) Receipt, of water rate Bill, date (sic) issued by office of the M.C. Hansi showing payment of Rs. 7.56 N.P. to M.C. Hansi.
- (iii) Copy of ejectment application filed by Anil Kumar LR of the respondent in

case Anil Kumar v. Firm Mohan Lal Dhanpat Rai in case No. 74-2 decided on 29.1.85;

(iv) Copy of order dated 29.1.85 in the above mentioned case;

(v) Copy of written statement dated 30.7.85 filed by Anil Kumar s/o Kirno Devi in rent application No.2 of 1985 in case firm Mohan Lal Dhanpat Rai v. Anil Kumar pending in the court of Shri R.L. Sankhla, Rent Controller Hansi along with interim orders dated 6.9.85 and 7.8.85 passed in the above proceedings;

(vi) Report of local commissioner dated 8.8.85 in rent application No. 2 of 1985 titled as firm Mohan Lal Dhanpat Rai v. Anil Kumar.

The second application was filed u/s 15(4) of the Act for producing on the record as additional evidence four site plans, two of them having been submitted by Shrimati Kirno Devi, respondent No. 1 before the Municipal Committee, Hansi and the other two site plans having been submitted by Ram Kumar from whom respondent No. 1 purchased the property in dispute. Both these applications have been dismissed by the learned Appellate Authority vide its order dated 22.9.1986. The petitioner thus being aggrieved against this order has approached this Court through the present Revision Petition.

3. After giving my thoughtful consideration to the matter, I find that the first application for production of the documents at (i) to (vi) above has been rightly dismissed by the learned Appellate Authority and no fault can be found with the order to that extent. I am, however, of the considered view that the second application has been wrongly dismissed. The petitioner sought to adduce these site plans which were on the record of the Municipal Committee much prior to the controversy between the parties arose. The eviction of the petitioner at the instance of the respondents has been ordered inter alia on the ground that it has closed the doors of the staircase opening on the chabutra of the disputed shop and had removed the Eastern Wall of the stair-case and the space of the stair-case has been included in the shop. In the application, it has been inter-alia averred thus:-

That the above site plans were not within the knowledge of applicant's firm at the time when the impugned order was passed by the learned Rent Controller, Hansi and inspite of due diligence the applicant's firm could not obtain these site plans because the official of Municipal Committee, Hansi orally reported to the applicant's firm that in 1973 fire took place in the Municipal Committee, Hansi building and the whole record was burnt due to that fire. The applicant's firm has now come to know that in fact in that fire only the record relating to house tax branch belonging to Municipal Committee, Hansi was burnt.

According to the petitioner these site plans would show that the position of the building was the same as it exists now and that no alteration had been made by it. So ejectment of the petitioner ordered on the basis of material impairment of value and utility of the premises shall stand negatived once these, site plans are

produced on the record.

4. Two of these site plans were submitted by respondent No. 1 to the Municipal Committee. The other two site plans were submitted by her vendor. The petitioner could not legitimately be expected to have knowledge of these site plans. So its plea that it had no knowledge of the same till the order was passed by the learned Rent Controller, Hansi, ought not to have been rejected. Likewise, the delay in making the application before the learned Appellate Authority was also explained by stating that earlier the petitioner was told that these site plans had been destroyed in a fire in the Municipal Committee building in the year 1973 but they later came to know that in that fire the record of house tax branch alone was destroyed. The genuineness of these site plans is beyond dispute because they are to come from the custody of the Municipal Committee and form part of the public record. Therefore, to meet the ends of justice, the petitioner should be allowed to produce this evidence.

5. In view of the above, I partly allow the present Revision Petition and modify the order under revision passed by the learned Appellate Authority. I direct that the petitioner should be allowed to produce the four site plans mentioned in its application u/s 15(4) of the Act from the record of the Municipal Committee. In view of partial success of the revision petition, the parties are left to bear their own costs.

6. The parties through their counsel are further directed to appear before the Appellate Authority for further proceedings on 10.10.1988.