

IN THE HIGH OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.3857 of 2010 (O&M)
Date of Decision: 30.6.2010

Chandi Ram

..Petitioner

Vs.

Hari Om Minda

..Respondent

Coram: Hon'ble Mr. Justice Vinod K.Sharma

Present: Mr.B.R.Mahajan, Advocate,
for the petitioner.

Vinod K.Sharma,J. (Oral)

This revision petition is directed against the order dated 18.05.2010 passed by the learned Appellate Authority under the Haryana Rent Act on an application moved under Order 41 Rule 27 of the Code of Civil Procedure for leading additional evidence.

The respondent had filed a petition seeking ejectment of petitioner from the shop wherein the petitioner was said to be a tenant.

Rent petition was dismissed.

In appeal, the respondent moved an application for leading additional evidence.

The learned Appellate Authority dismissed the appeal against which the respondent filed Civil Revision No.6812 of 2008, which was

allowed as the application for additional evidence remained undecided.

It was in pursuance to the order passed by this court that the application was considered and allowed and case was remanded back to the learned Rent Controller to submit his report on the additional evidence which was sought to be produced.

Mr.B.R.Mahajan, learned counsel appearing on behalf of the petitioner has challenged the impugned order on the ground that the application for additional evidence was required to be decided along with the main appeal and not separately.

In support of this contention, the learned counsel for petitioner placed reliance on the judgment of Hon'ble Supreme Court in the case of **State of Rajasthan Vs. T.Sahani 2001 (2) RCR (Civil) 419**, wherein it has been held that it is entirely for the court to consider at the time of hearing of appeal on merits as to whether the documents sought to be filed as additional evidence, are required to be looked into to pronounce its judgment in more satisfactory manner.

Reliance was also placed on the judgment of this court in the case of **Municipal Committee, Ellenabad Vs. Shanti Devi 2003 (1) RCR (Civil) 85**. wherein this court was pleased to hold that the appellate court should decide the application at the stage of deciding the appeal and the order deciding application without decision of appeal cannot be sustained.

However, on consideration, I find that the judgments relied upon by the learned counsel for the petitioner, are not applicable to the facts of the present case.

In this case, the appeal was already decided and the order

passed by the appellate court was set aside by this court by directing the appellate authority to decide the application for additional evidence and as it was found by the appellate authority to be necessary for pronouncement of the judgment.

Once the decision has been taken in pursuance to the order passed by this court, the fact whether additional evidence was required or not already stood concluded and therefore, no fault can be found with the order passed in deciding the application for additional evidence.

Learned counsel for the petitioner thereafter contended, that the evidence sought to be led by way of additional evidence is not admissible. This contention cannot be sustained as in pursuance to the order passed it is for the trial court to see whether the evidence would be read into evidence or not.

Finally, it was contended that the additional evidence could not be allowed to fill in the lacuna in the case.

This plea is again misconceived as the evidence sought to be led was found necessary for the court to pronounce the judgment in the case as it was proved that the petitioner had prima facie taken a false plea which stood belied by the documentary evidence.

The contention raised, therefore, deserves to be noticed to be rejected.

No merit.

Dismissed.

30.6.2010
rp

(Vinod K.Sharma)
Judge