

Devender Kumar Goyal vs Rakesh Kumar Jain on 3 October, 2024

Author: Vikas Bahl

Bench: Vikas Bahl

Neutral Citation No:=2024:PHHC:131756

CR-5795-2024

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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR-5795-2024

Date of decision : 03.10.2024

Devender Kumar Goyal

... Petitioner

Versus

Rakesh Kumar Jain

... Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Vinay Kumar Pandey, Advocate
for the petitioner.

VIKAS BAHL, J. (ORAL)

1. This is a Civil Revision Petition filed under Article 227 of the Constitution of India for setting aside / modification the order dated 20.09.2024 passed by the Additional Civil Judge (Sr.Div.), Ferozepur Jhirka in R.P no.2 of 2020 titled as "Rakesh Kumar Jain vs. Devender Kumar Goyal" whereby the application for additional evidence on behalf of the petitioner has been partly allowed and partly rejected.

2. Brief facts of the present case are that the respondent had filed an eviction petition dated 28.02.2020 for ejectment of the present petitioner from the shop in question. In the said case,

written statement was filed and thereafter, issues were framed. It is not disputed before this Court that the landlord and the tenant (petitioner) have led their entire evidence and the 1 of 5 Neutral Citation No:=2024:PHHC:131756 case was at the stage of rebuttal evidence when an application was filed by the petitioner (tenant) for additional evidence without referring to any provision under which the same would be maintainable. By virtue of the said application, the petitioner wanted to bring on record the copy of reply / written statement in the case titled as "Rakesh Kumar vs. Subhash Chand"

and also the copy of the complaint filed under the Food Safety and Standard Act 2006. A reply was filed to the said application in which it was stated that the same was not maintainable and the petitioner cannot be permitted to fill up the lacuna as the entire evidence has already been completed. It was further stated that the complaint which was sought to be produced on the record was neither relevant nor admissible. It was also stated that the complaint could not be stated to be a subsequent event and the petitioner could not be permitted to produce the same as he had taken sufficient time in leading his evidence.

3. The trial Court vide order dated 20.09.2024 had permitted the petitioner to place on record the certified copy of the reply / written statement in the case titled as "Rakesh Kumar vs. Subhash Chand" by observing that the copy of the petition and other documents related to the said case had already been filed by the present petitioner and considering it to be an inadvertent mistake, the production of the said reply / written statement, was allowed, but however, with respect to the complaint, which was sought to be produced in additional evidence, the trial Court had observed that the same was not relevant for the purpose of adjudication of the case and there was no requirement to produce the copy of the said

2 of 5 Neutral Citation No:=2024:PHHC:131756 complaint and the related documents.

4. Learned counsel for the petitioner has submitted that the complaint is necessary for adjudication of the present case inasmuch as it is the plea of the respondent-landlord in the eviction petition, moreso, in paragraph 4 (ii) that he was working in his brother's shop which was in the name and style of M/s Jain Mishthan Bhandaar and it was Subhash Chand Jain, who was the proprietor of M/s Jain Mishthan Bhandar and the said document (Annexure P-3) which is the complaint dated 03.09.2018 would show that the present respondent has been shown as a food business operator which would infer that the said shop is under the ownership of the respondent-landlord.

5. This Court has heard the learned counsel for the petitioner and has perused the paper book.

6. The right to produce additional evidence was provided under Order 18 Rule 17A in the Code of Civil Procedure, 1908 and the said provision read as "Production of evidence not previously known or which could not be produced despite due diligence" but however by virtue of the Code of Civil Procedure (Amendment) Act 1999 w.e.f. 01.07.2002, the said provision has been deleted. There is no provision in the Code of Civil Procedure that gives a right to the party to lead additional evidence.

Learned counsel for the petitioner has not been able to refer any provision either in the Code of Civil Procedure or in the Rent Act to show that a party has the right to lead additional evidence. In the present case, it is not in dispute that the entire evidence of the petitioner as well as of the respondent-landlord 3 of 5 Neutral Citation No:=2024:PHHC:131756 has been concluded and thus, there is no right vested in the petitioner to lead additional evidence.

7. In addition to the same, it would be also relevant to note that the complaint dated 03.09.2018 is not relevant for the purpose of adjudication of the eviction proceedings. On a pointed query raised by this Court, learned counsel for the petitioner has not been able to refer any averment in the said complaint dated 03.09.2018 which shows that the respondent is the exclusive owner of the premises in question. Merely because the respondent is shown to be a food business operator does not mean that it is the respondent, who is the owner of the property. Moreover, there are specific pleadings in paragraph 4(ii) of the eviction petition in which it has been specifically stated by the respondent herein that he is working with his brother in the shop under the name and style of M/s Jain Mishthan Bhandar, which is stated to be a proprietorship firm of which the proprietor is Subhash Chand, brother of the respondent. The complaint also pertains to M/s Jain Mishthan Bhandar in which the respondent is stated to be a food business operator and the said aspect of the respondent working in the said premises has already been stated by the respondent-landlord in paragraph 4(ii) of the eviction petition. It cannot be inferred from the complaint dated 03.09.2018 that the sole proprietor of the said M/s Jain Mishtan Bhandar is the respondent and not his brother Subhash Chander Jain. It would also be relevant to note that the said complaint dated 03.09.2018 was in existence much prior to the filing of the eviction petition in the year 2020 and also prior to the petitioner leading his evidence.

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8. Keeping in view the above said facts and circumstances, this Court is of the opinion that the impugned order is in accordance with law and deserves to be upheld and the petition filed by the petitioner being meritless and deserves to be dismissed and is accordingly dismissed.

(VIKAS BAHL) JUDGE October 03, 2024.

Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No