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*BEFORE AJAY KUMAR MITTAL, J.*

GIRDHARI LAL,—*Petitioner*

versus

RITESH MAHAJAN AND ANOTHER,—*Respondents*

C.M. No. 8812-CII of 2005

C.R. NO. 2270 of 2005

30th August, 2005

*East Punjab Urban Rent Restriction Act, 1949—S. 13—Landlord tendering documents while appearing as witness in his eviction petition—Trial Court exhibiting the said documents—Tenant filing application for de-exhibiting the documents on the ground that the same could not have been exhibited in law—Trial Court keeping decision pending of the application till the time of final arguments—Challenge thereto—Whether trial Court is obliged to first decide the question of admissibility of the documents before making endorsement thereon—Held, yes—Petition allowed while directing the trial Court to first decide the said application moved by the tenant.*

*Held*, that the documents tendered in evidence by landlord/respondent No. 1 along with affidavit were exhibited and the petitioner had moved the application for de-exhibiting the same on the ground that the same could not have been exhibited in law. The petitioner, however, had specifically averred in his application that the fact of the said documents having been exhibited came to his knowledge while going through the affidavit of the respondent-landlord at the time of his cross-examination. However, the question of admissibility of those documents has yet to be decided. Thus, the Rent Controller was obliged to first decide the question of admissibility of the documents before making endorsement thereon. The approach of the Rent Controller to postpone the consideration of the objection raised by the petitioner to the stage of final arguments is legally unsustainable.

(Para 6)

Anil Chawla, Advocate, *for the petitioner.*

T.R. Bansal, Advocate, *for respondent No. 1.*

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**ORDER**

**AJAY KUMAR MITTAL, J.**

(1) Respondent-landlord, Ritesh Mahajan filed an eviction application under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 *inter alia*, on the grounds of non-payment of arrears of rent, *bona fide* requirement of the premises in dispute, sub-letting and making material alterations etc. The petitioner herein contested the application denying the averments made therein and also denying the relationship of landlord and tenant between the parties.

(2) Respondent No. 1 while appearing as his own witness as AW-4 tendered his evidence by way of an affidavit appending therewith photostat copies of certain documents Exhibits AW-4/1 to AW-4/7, which according to the petitioner-tenant were not admissible in evidence. The petitioner, therefore, filed an application for de-exhibiting the said documents on the ground that the same could not be exhibited under the law.

(3) Learned Rent Controller after hearing counsel for the parties in order dated 21st March, 2005 observed, "this court is of considered opinion that the decision of this application and the objection of the respondent is kept open and will be decided at the time of final arguments." It is this order which the petitioner-tenant has impugned in this revision petition.

(4) Counsel for the petitioner submitted that photo copies of the documents which had been tendered by the respondent-landlord in his evidence could not have been legally exhibited and the decision on the application moved by the petitioner could not have been deferred to the stage of final arguments. The counsel in support of his submission relied on a decision of Delhi High Court in **Smt. Shail Kumari versus Smt. Saraswati Devi**, (1), another decision of Rajasthan High Court in **LRs of late Shri Chittar Mal versus Addl. Civil Judge (SD) and others** (2) and the decision of the Apex Court of **R.V.E. Venkatachala Gounder versus Arulmigu Viswesarasswami and V.P. Temple and others** (3).

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(1) 2002 (3) Civil Court Cases 84 (Delhi)

(2) 2005 (2) R.C.R. (Civil) 16

(3) 2003 (4) R.C.R. (Civil) 704

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(5) After hearing counsel for the petitioner and perusing the record, I am of the view that the submission made by him has merit. The Apex Court in **R.V.E. Venkatachala Gounder's case** (*supra*) has clearly observed that if an objection to the admissibility of a document is raised before such an endorsement is made thereon, the court is obliged to express its opinion on the question of admissibility of the said document. Following this dictum of the Apex Court, the Rajasthan High Court in **LRs of late Shri Chittar Mal's case** (*supra*), in similar circumstances directed the trial court to first decide the question about the admissibility of the document before proceeding further in the case. The Delhi High Court also in **Smt. Shail Kumari's case** (*supra*) held to the same effect. The relevant observations made in paras 24 and 25 read as under :

“24. Having regard to the above discussion and the judgment of the Division Bench cited above, I am of the considered view that the learned Civil Judge committed material irregularity in the exercise of jurisdiction in not deciding the question of admissibility of the documents marked ‘X’ and ‘Y’ and of making of exhibit on them immediately when the dispute was raised or after atleast the application was moved by the petitioner making this request.

25. For the reason stated above, the petition is allowed. The order of the Trial Court by which it has deferred the consideration of the question of admissibility of the documents and marking of exhibit on the documents marked ‘X’ and marked ‘Y’ to the stage of final argument is set aside. The Trial Court is directed to consider this question at an early date.”

(6) In the present case, no doubt the documents tendered in evidence by respondent No. 1 alongwith his affidavit were exhibited and the petitioner had moved the application for de-exhibiting the same on the ground that the same could not have been exhibited in law. The petitioner, however, had specifically averred in his application that the fact of the said documents having been exhibited came to his knowledge while going through the affidavit of the respondent-landlord at the time of his cross-examination. In the present case, however, the question of admissibility of those documents has yet to be decided. Thus, in view of the observations in the above noted decisions, the

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Rent Controller was obliged to first decide the question of admissibility of the documents before making endorsement thereon. The approach of the Rent Controller to postpone the consideration of the objection raised by the petitioner to the stage of final arguments is legally unsustainable.

(7) In view of the above, this revision petition is allowed and the impugned order dated 21st March, 2005 is set aside. Accordingly, the Rent Controller is directed to first decide the application moved by the petitioner for de-exhibiting the documents aforesaid, before proceeding further in the case.

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R.N.R.

*BEFORE S. S. NIJJAR & NIRMAL YADAV, JJ.*

SAROJINI SAWHNEY,—Petitioner

versus

PUNJAB UNIVERSITY AND OTHERS,—Respondents

*C.W.P. No. 958 of 2005*

30th August, 2005

*Constitution of India, 1950—Art.14, 16, 21 and 226—Punjab Medical Attendance Rules, 1940—Rls. 7 and 48(i)—Punjab University Calendar Vol. III, Edition 1996—Rl.2(xi)—Death of husband of petitioner—Claim for reimbursement of medical expenses- Husband of petitioner retired from SBI—No provision for reimbursement of medical expenses in SBI of retired employees— Under the Scheme a member is only entitled to claim upto Rs. 2 lacs on account of medical treatment—Petitioner spent more than Rs. 4 lacs on treatment of her deceased husband- SBI paid Rs. 2 lacs to the total claim—Petitioner submitting remaining claim to the University— Rejection of on the ground that the same is not covered under the Rules—Challenge thereto—Claim of petitioner does not fall within the definition of “dependent” as given in R1.2(xi) of the University Calendar—Petitioner also not entitled to claim in view of Paragraph 48(i) of 1940 Rules- R1.7 of 1940 Rules empowers the respondents to relax the rules relating to medical treatment in special cases of hardship—Petitioner’s*