

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.2118 of 1999 (O&M)
Date of Decision: 05.02.2015

Lalit Kumar

...Petitioner

Versus

Narinder Kumar and another

...Respondents

CORAM: HON'BLE MR.JUSTICE R.P. NAGRATH

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

Present: Mr. Ajay Jain, Advocate
for the petitioner.

Mr. Anurag Jain, Advocate
for the respondents.

R.P. Nagrath, J.

This revision petition has been filed under Section 15(6) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (for short to be referred as 'the Act') to challenge the orders passed by the Courts below whereby application of petitioner-landlord seeking eviction of the respondents was dismissed.

The eviction petition was filed before the Rent Controller, Hisar on 09.06.1990 seeking eviction of the respondents on the grounds, inter alia, that (i) tenant-respondent No.1 is in arrears of rent w.e.f. 01.05.1990, (ii) respondent No.1 has shifted to Hyderabad

and has sublet the demised premises to respondent No.2 without the written consent of the landlord and (iii) the respondents removed western wall of the demised shop and thus have materially impaired the value and utility of the demised premises. Learned counsel for the petitioner submitted that the only ground of eviction that survives in the instant petition is subletting of the demised premises to respondent No.2.

I have heard learned counsel for the parties at considerable length, carefully perused the impugned orders and also the records.

Learned counsel for the petitioner vehemently contended that the petitioner mainly relies upon the following circumstances in support of the ground of eviction:-

- (i) that respondent No.2 was served at his address of the property in question situated at Parijat Chowk, Hisar;*
- (ii) That respondent No.1 sent Deepawali and New Year greetings (Ex.PX) in the envelope (Ex.PY) to the petitioner. In Ex.PX, the address of respondent No.1 is mentioned as Aarti Enterprises, Maharajgunj, Hyderabad. Respondent as RW-1 also admitted that Aarti is the name of his daughter. It is further admitted that the children of respondent are staying at Hyderabad. The contention of the respondent was that his children are studying in Hyderabad and staying in a hostel there.*

It is quite pertinent to note that the summon sent to respondent No.2 was by describing his address as Parijat Chowk near Sadhu Ram Panwari, Hisar, but the description of the property in question on rent with respondent No.1 is B-XIV-403/257 which was not mentioned in the address of respondent No.2 on the notice or even in the petition itself. The perusal of record of the Rent Controller would show that the appearance on behalf of respondent No.2 was made on a few dates before the learned Rent Controller, but none had appeared for respondent No.2 on 20.08.1991. He was proceeded against ex parte before the Rent Controller.

Learned counsel for the petitioner submitted that Local Commissioner was appointed to visit the spot and at that time the shop was lying closed. To prove this report of the Local Commissioner, petitioner examined PW-3-Urmila Sharma, Advocate, who was appointed as the Local Commissioner. This was otherwise not disputed that ex parte order of appointment of the Local Commissioner was passed and the Local commissioner visited the spot without serving notice to the respondent. Anyhow, evidence in respect of the premises lying closed at the time of visit of Local Commissioner would not support the contention that respondent No.2 in fact was running business in the shop in question. There was not an iota of evidence to support that respondent No.1 had been doing business in the shop in question nor any photographs were proved on the file showing respondent No.2 to be present and carrying on the business in the shop in question.

The eviction petition was decided on 19.7.1996 by the Rent Controller and the order of Appellate Authority is dated 17.12.1998.

The petitioner had also filed another Eviction Petition No.146 instituted on 09.09.1991 seeking ejectment of the respondent-tenant on the ground of the tenant having ceased to occupy the demised premises for more than 6 months. The Rent Controller dismissed that petition on 31.05.1997. The Appellate Authority accepted the application and passed the eviction order dated 13.02.1999. Against that order CR No.1322 of 1999 was filed in this Court, the record of which has been added.

When the instant petition was listed on 26.11.2014, the learned counsel for the petitioner submitted that another eviction petition was filed by the landlord and the eviction order passed in that petition had attained finality, so the record of CR No.1322 of 1999 was directed to be added.

On 28.01.2015, it was submitted on behalf of petitioner that the execution in respect of eviction order passed in C.R. No.1322 of 1999 was not carried out because the landlord had died, but on behalf of respondent, it was contended that the matter was in fact compromised.

Perusal of the record of CR No.1322 of 1999 titled Narinder Kumar (tenant) Vs. Lalit Kumar (landlord) and Ramesh Kumar would reveal that when the said petition was listed on 17.07.2001, the following order was passed:-

“Learned counsel for the respondent (petitioner herein)

states at the bar that the matter has been compromised and the petitioner is no longer interested in prosecuting the revision. The learned counsel for the petitioner is not in a position to endorse or contradict the contention of the learned counsel for the respondent. He is directed to seek further instructions from his client. Adjourned to 29.8.2001.”

On 18.10.2001, counsel for respondent No.1 submitted that a compromise has been effected between the parties vide which rent of the demised premises has been increased. Therefore, the said revision petition was dismissed with the observation that if there was any fresh tenancy, it can always be enforced by Narinder Kumar (respondent No.1 herein) the petitioner before the competent forum.

Learned counsel for the respondents has also submitted that the increased rent in terms of the compromise is being paid. Whether the rent for the subsequent period is being paid at the agreed or enhanced rate is subject matter of consideration in a different litigation. But the fact that a compromise had been reached between the parties in the year 2001 and the instant petition was filed in 1999, the cause of action in the instant petition for seeking ejectment on the ground of subletting would not have survived.

Even on facts, the learned Appellate Authority analyzed the evidence led by the parties and observed that there is only oral assertion made by petitioner-landlord that respondent No.1 has given control of the shop in question to respondent No.2 or that

respondent No.2 was running the business of readymade garments in this premises. Except this bald assertion of the petitioner, there was no evidence worth-while on record. It was further observed that if respondent No.1 was residing at Hyderabad for the past about 6/7 years and got admitted his wards in some school, that evidence by itself was not sufficient to hold that respondent no.1 has sublet the demised premises.

It was further observed that petitioner had failed to prove that respondent No.2 was in exclusive possession of the shop in question.

The learned Appellate Authority further observed as under:-

“20. Lastly, it was argued on behalf of the landlord that Narender Kumar respondent No.1 when stepped into the witness box in support of his case has admitted in the cross-examination that in the shop in dispute, repair work of the bicycles was carried out and there was a Subscribers Trunk dialing both functioning alongwith that business of bicycles. It is vehemently argued that the S.T.D. Booth was being run in the name of Sant Ram, a licensee of the Post and Telegraph Department and, therefore, the factum of subletting stands proved from the statement of respondent No.1 himself.

21. The submissions made by Mr. S.D. Aggarwal in this respect are misconceived. In the absence of the

pleadings, no amount of evidence can be looked into. It is nowhere pleaded that the shop in dispute or part hereof has been sublet in favour of Sant Ram to instal a S.T.D. Booth. Rather, to the contrary, it has come on record that though the licence was in the name of Sant Ram, but the business was being carried and controlled by Narender Kumar tenant himself as the licensee was a handicapped man.....”

The finding of fact on proper analysis of the evidence cannot be interfered in the revisional jurisdiction unless it is shown that some material available before the Courts below has been ignored or there has been misleading of the evidence. In the absence of any such illegality or perversity the revisional jurisdiction is quite limited as held by five Judges Bench of Hon'ble Supreme Court in ***Hindustan Petroleum Corporation Ltd. vs. Dilbahar Singh, (2014)9 SCC 78.***

There is no merit in the instant petition.

Dismissed.

05.02.2015
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(R.P. Nagrath)
Judge