

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CR No. 1452 of 2013

Date of decision : 15-10-2015

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Bestways Transport India Pvt. Ltd. through
its General Managers (Law and Recovery) Sh. Davinder Gaur
.....Petitioner

Versus

Kuldeep Singh
.....Respondent

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. A.P Bhandari, Advocate for the petitioner.

Mr. Rahul Rampal, Advocate for the respondent.

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1. *Whether Reporters of Local Newspapers 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?*

RITU BAHRI, J

The petitioner-plaintiff has come up in revision petition
against the judgment and decree dated 2.5.2012 passed by the Civil
Judge (Junior Division), Ludhiana vide which the suit of the

petitioner-plaintiff was dismissed

Petitioner-plaintiff had filed the present suit for possession of half of the ground floor of property no. 143 situated in Transport Nagar, Ludhiana and for recovery of Rs.30,000/- as damages for illegal occupation of the premises in question for the period of 10.10.2009 to 25.11.2009 and further damages at the rate of Rs.20,000/- per month from the date of filing of the suit till the delivery of possession to the petitioner-plaintiff and for mandatory injunction with a direction to respondent-defendant to construct the walls to bring the godown to its original shape and further for permanent injunction restraining the respondent-defendant from letting out or alienating the above said property to any person in any manner.

As per the plaint, the petitioner-plaintiff is a private limited Company and is tenant in portion shown as red in the site plan in the property no.143, Transport Nagar, Ludhiana. This property was rented out to M/s National Road Carriers Ludhiana. Dalip Singh and Rajinder Singh were the owners of this property being partners of M/s National Road Carriers, Ludhiana. The petitioner-plaintiff was inducted as tenant by Dalip Singh in property no. 143, Transport Nagar, Ludhiana @ Rs.7500/- per month. Both Dalip Singh and Rajinder Singh used to share the rent amount i.e Rs.3750 each. After the death of Dalip Singh his son Davinder Singh became the partner/owner of the firm and he started realizing rent from the petitioner-plaintiff. There was partition of property no.143 between

Rajinder Singh and Dalip Singh and the red portion shown in the site plan fell into the share of Sh. Dalip Singh and the other portion fell to the share of Rajinder Singh. The petitioner-plaintiff had surrendered the portion which fell to the share of Rajinder Singh and thereafter continued to be a tenant in the portion which belonged to Dalip Singh. Davinder Singh son of Dalip Singh sold this property to Kuldeep Singh, respondent-defendant and thereafter the plaintiff became a tenant under Kuldeep Singh and started paying rent to him. Dalip Singh received rent up to 30.11.2009 and stopped getting the rent from the petitioner-plaintiff thereafter. The petitioner-plaintiff sent the rent amount through cheques which were not accepted by Kuldeep Singh and ultimately the plaintiff deposited the amount of rent in Civil Court at Ludhiana. Rajinder Singh filed an ejectment application against the petitioner-plaintiff for its eviction. The petitioner-plaintiff continued to be in possession of the property which was purchased by Kuldeep Singh. With the consent of the petitioner-plaintiff, Kuldeep Singh constructed a roof over the vacant portion lying in front of the godown of the plaintiff and raised construction on the first floor. On 10.10.2009, Kuldeep Singh along with others removed the goods of the plaintiff from the godown cum office and shifted the goods to a room on the first floor of the same building illegally and forcibly. The wall of the godown were removed and the entire portion on the ground floor was made big godown. The plaintiff was evicted illegally and unlawfully and the goods belonging to him were wrongly placed in a room on the first floor. An application was

moved by the petitioner-plaintiff to the SHO, Police Station, Division No.6, Ludhiana intimating about the trespass committed by Kuldeep Singh but no action was taken. Thereafter vide letter dated 19.10.2009 written to the SHO, Police Station Division No.6, Ludhiana, complaint was made with regard to the trespass committed by Kuldeep Singh, but again no action was taken. Respondent-defendant Kuldeep Singh after changing the shape of the godown was contacting certain parties to lease out the same after dispossession of the petitioner-plaintiff.

On notice, the respondent-defendant filed a written statement and took preliminary objections that the suit was false, frivolous and that the plaintiff was not competent and authorized to file the suit. It was further stated in the written statement that the petitioner-plaintiff had no cause of action to file the suit and is the same is liable to be rejected under Order 7 Rule 11 CPC.

On merits, it was stated that M/s National Road Carriers was the owner of the plot no. 143 min, measuring 125 square yards and M/s National Road Carriers sold this plot measuring 125 square yards bearing plot no.143 min to the respondent-defendant vide sale deed dated 1.8.2007. The said sale deed was duly registered with the officer of Sub Registrar, Ludhiana vide wasika no. 8080 dated 10.8.2007. In that sale deed, it was specifically mentioned that M/s National Road Carriers has delivered the possession of entire vacant property measuring 125 square yards. The petitioner-plaintiff was later on inducted as tenant by the defendant on a monthly rent of

Rs.4000/- per month and house tax at the rate of 15% p.a in one room situated at first floor. The petitioner-plaintiff paid the rent and house tax to the respondent-defendant up to 31.8.2008 and thereafter did not pay the rent and house tax. The ejectment petition on the ground of non payment of rent and house tax filed by the respondent-defendant was pending against the petitioner-plaintiff before the Court of Rent Controller, Ludhiana and prayed for dismissal of the suit.

The petitioner-plaintiff filed the replication to the written statement in which he reiterated the version of the plaint and controverted all the averments of written statement filed by the respondent-defendant. Following issues were framed by the trial Court:

1.Whether the plaintiff is entitled for possession of half share of the ground floor of property no. 143 situated in Transport Nagar, Ludhiana shown as red in the site plan?OPP.

2.Whether the plaintiff is entitled to recovery Rs. 30,000/- as damages on account of illegal occupation of the premises in question for the period 10.10.2009 to 25.11.2009 and also further damages at the rate of Rs. 20,000/- per month from the date of filing suit till the delivery of possession to the plaintiff?OPP.

3. Whether the plaintiff is entitled for Mandatory

injunction as prayed for ?OPP.

4. Whether the plaintiff is entitled for Permanent Injunction as prayed for?OPP.

5. Whether suit is not filed by competent person?OPD.

6. Whether the plaintiff no cause of action to file the present suit?OPD.

7. Whether suit is bad for non joinder and mis-joinder of necessary parties?OPD.

8. Whether the plaintiff has no locus standi to file the present suit?OPD.

9. Whether the suit is barred by limitation?OPD.

10. Whether the suit is not properly valued for the purpose of court fee and jurisdiction?OPD.

11. Whether the plaintiff has not come to the court with clean hands?OPD.

Issues no. 1, 2, 3 and 4 were taken up together being interconnected. The version of the petitioner-plaintiff was examined as per the deposition of PW-1, Davinder Gaur and PW-2 Rajiv Bhalla. PW-1 stated that he was permanent resident of Faridabad and joined the petitioner-plaintiff/Company in May 2007 and deputed to look after the business of the company at Faridabad. He did not bring the resolution of the Company dated 27.11.2009 which authorized him to file the present suit. In his cross-examination, he could not tell whether the rent note was executed at the time of

taking the property no. 143 on rent from Dalip Singh. He was not sure whether the rent note executed by Dalip Singh was in possession of petitioner-plaintiff or not. Untill the property was transferred in the name of Kuldeep Singh, Dalip Singh and Davinder Singh used to receive the rent. No documents of partition of Rajinder Singh and Dalip Singh were brought on record. Police did not conduct inquiries on their applications but an enquiry was conducted on application dated 19.10.2009. He did not join the said enquiry and was told by the police to approach the Civil Court. He made an attempt to get the DDR and FIR registered against the respondent-defendant. No complaint was filed by the petitioner-plaintiff in the Court. An eviction petition had been filed by the respondent-defendant against the petitioner-plaintiff prior to filing of the suit.

PW-2, Rajiv Bhalla stated that he joined the petitioner-plaintiff/company on 1.1.2009 but did not bring the appointment letter in the court. He was posted at Faridabad. Whenever he visited Ludhiana he used to stay with Vishva Nath, one of the employee of the petitioner-plaintiff/company. He admitted that respondent-defendant was owner landlord of the property no. 143, Transport Nagar, Ludhiana. No article was removed by respondent-defendant in his presence at any occasion. No complaint was moved by him to any higher authority on 10.10.2009 No application was moved to any police authority with regard to the incident by any of the employee of the petitioner-plaintiff/Company.

PW-3, Sh. Stevon Soni, Advocate stated that he never

visited the property in dispute and the party had got the site plan prepared themselves.

In cross-examination, respondent-defendant Kuldeep Singh stated that earlier the property in question was owned by M/s National Road Carriers, which was a proprietorship concern and owned by Rajinder Singh. It was measuring 250 square yards out of which he purchased 125 square yards. He had seen the property before it was purchased by him on 19.7.2007. M/s Bestways Transport were a tenant in the property in question but it was vacant when he purchased it. He was not aware of any civil suit pending between Rajinder Singh and son of Dalip Singh regarding the property in question. He started accepting rent from the petitioner-plaintiff immediate after purchase of property in question. No rent note was executed regarding the property in question. The ground floor of the property in question can fetch a rent of Rs.25,000 to Rs.30,000/- per month. During cross-examination, no inference could be drawn that the property in dispute was in possession of the petitioner-plaintiff. The petitioner-plaintiff did not produce any rent note on record as it is a private limited company so it cannot be expected that without entering into written agreement or rent note they took premises on rent and no record of the petitioner-plaintiff/Company regarding taking the premises on rent was produced. As per Ex. P-9, in which the rate of rent was mentioned as Rs. 4000/- per month, the version of the respondent-defendant that the premises was let out @ Rs.4000/- per month was considered

true. Moreover, the admission of the respondent-defendant that he had filed an eviction petition against the petitioner-plaintiff prior to filing of the present suit by the petitioner-plaintiff was not in dispute between the parties. PW-1, Davinder Gaur did not produce any resolution of the Company authorizing him to file a suit. Only a copy of the minutes of the meeting which was signed by the Chairman was brought on record as Ex. P-1. Original minutes of meetings were not proved. The petitioner-plaintiff had miserably failed to prove his possession over half of the portion of ground floor of property no.143 as tenant prior to 10.10.2009. The findings on issue no. 5, 6, 7, 8, 9 and 10 were decided against the defendant and in favour of the plaintiff. However, on the basis of the finding on issue no. 1, 2, 3 and 4, the suit for seeking relief of possession was dismissed by the trial Court and he was not held entitled for damages as claimed in the plaint.

A perusal of the impugned judgment shows that the petitioner-plaintiff had not led any evidence to show that the first floor of the property in dispute had been taken on rent. At the same time as per Ex. P-9, the respondent-defendant had successfully proved that he had rented out the first floor of the property in question to the petitioner-plaintiff at Rs.4,000/- per month. The respondent-defendant had already filed an eviction petition against the petitioner-plaintiff. The case of the respondent-defendant in the written statement was that the plaintiff had paid rent up to 31.8.2008 and thereafter, did not pay any rent or house tax and the ejectment

petition filed by the defendant was pending in the Court of Rent Controllor, Ludhiana. Even Davinder Gaur has not placed on record any resolution which authorized him to file the suit.

The sale deed duly registered with the office of Sub Registrar, Ludhiana vide wasika no. 8080 dated 10.8.2007 shows that the property in question was sold to the respondent-defendant Kuldeep Singh and thereafter the petitioner-plaintiff was inducted as a tenant on the monthly rent of Rs.4000/- per month for one room situated on the first floor up to 31.8.2008 and thereafter the ejectment petition on the ground of non-payment of rent was filed. The above evidence led by the respondent-defendant was sufficient to record a finding that the petitioner-plaintiff was not in possession of the ground floor. The law on the proceedings initiated under **Section 6** of the **Specific Relief Act, 1963** has been considered by the Supreme Court in the case of **Sanjay Kumar Pandey and others vs. Gulbahar Sheikh and others, 2004 (3) RCR (Civil) 466 (SC)**, wherein it has been held that ***the proceedings under Section 6 are summary in nature limited to finding out question of possession within period of six months of institution of suit ignoring question of title. The remedy of a person unsuccessful in a suit under Section 6 of the Act is to file a regular suit establishing his title to the suit property and in the event of his succeeding he will be entitled to recover possession of the property notwithstanding the adverse decision under Section 6 of the Act. The revisional jurisdiction is limited to the scope of***

revision of Section 115 of the Code of Civil Procedure.

In the case of **Dr. Surinder Singh Talab vs. Bua Dass (died) through LRs. 2005 (1) RCR (Civil) 498**, a Co-ordinate Bench of this Court observed in paragraphs 5 & 6 as under:

5. The scope of a suit filed under [Section 6](#) of the Act is quite limited, inasmuch as, the Court is required to hold summary proceedings in relation to lawful possession of the aggrieved plaintiff and his dispossession therefrom in an unlawful manner. It is only when both the factors are established that the Court is competent to issue a decree in relation to restoration of possession in favour of the plaintiff. It is for this precise reason that no appeal or review is maintainable against such decree as provided under sub-section (3) of [Section 6](#) of the Act. Equally, when the suit is dismissed no appeal is maintainable against the same, though the High Court in exercise of revisional jurisdiction under Section 115 of the Code of Civil Procedure may interfere if a strong case within the parameters laid down for invoking powers under Section 115 of the Code is made out. In the case in hand, the findings recorded by the

learned Civil Court on issue No. 1 are self-speaking. The issue in question was primarily required to be decided on appreciation of oral evidence available on record. The learned Civil Court has given a firm finding of fact that neither the petitioner was a tenant in the shop in question nor was he dispossessed forcibly by the respondent. Such a finding having been returned on appreciation of the oral evidence and there being no other material evidence to the contrary on record, I am of the view that no ground to interfere in such finding of facts in exercise of the revisional jurisdiction of this Court is made out.

6. My aforementioned view finds support from a recent judgment of the Apex Court in [Sanjay Kumar Pandey and Ors. v. Gulbahar Sheikh and Ors.](#), 2004(3) ALD 38 (SC). In paragraph 4 of the judgment, their Lordships have held that:-

"A suit under [Section 6](#) of the Act is often called a summary suit inasmuch as the enquiry in the suit under [Section 6](#) is confined to finding out the possession and dispossession within a period of six months

from the date of the institution of the suit ignoring the question of title. Sub-section (3) of Section 6 provides that no appeal shall lie from any order or decree passed in any suit instituted under this section. No review of any such order or decree is permitted. The remedy of a person unsuccessful in a suit under Section 6 of the Act is to file a regular suit establishing his title to the suit property and in the event of his succeeding he will be entitled to recover possession of the property notwithstanding the adverse decision under Section 6 of the Act. Thus, as against a decision under Section 6 of the Act, the remedy of unsuccessful party is to file a suit based on title. The remedy of filing a revision is available but that is only within the well-settled parameters of the exercise of revisional jurisdiction under Section 115 of the Code."

Hence in the facts of the present case, the petitioner-plaintiff has miserably failed to prove that he was in possession of the property which was purchased by the respondent-defendant from Davinder Singh son of Dalip Singh and that he was paying a rent of Rs.4000/- for the ground floor. At the same time, respondent-

defendant as per Ex.P-9 and the registered sale deed have proved that they had rented first floor to the petitioner-plaintiff/Company @ Rs.4000/- per month. The finding recorded by the trial Court that the petitioner-plaintiff was not in possession of the ground floor has been recorded as per the evidence led by the petitioner-plaintiff and the respondent-defendant.

In view of all that has been discussed above, the impugned judgment is neither without jurisdiction nor there is any material irregularity or infirmity in it. Hence, the revision petition is dismissed.

15.10.2015
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(**RITU BAHRI**)
JUDGE