

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(1)

CR No.1631 of 2015(O&M)
Date of decision: 1.4.2015

Sahil Ghai and another

...Petitioners

Versus

Raj Kumari and another

...Respondents

(2)

CR No.6637 of 2013(O&M)
Date of decision: 1.4.2015

Sahil Ghai and another

...Petitioners

Versus

Raj Kumari and another

...Respondents

CORAM:-

HON'BLE MR. JUSTICE GURMIT RAM

Present:

Mr. Aman Bansal, Advocate
for the petitioners.

Mr. Ashwani Talwar, Advocate
for the respondents.

GURMIT RAM, J.

The above-said CR No.1631 has been filed by the petitioners-tenants against the judgment dated 2.2.2015 passed by the learned Appellate Authority Panchkula in Rent Appeal No.544 of 2013 vide which their appeal has been dismissed and the order of ejectment passed by the learned Rent Controller, Panchkula dated 23.3.2013 has

been upheld.

CR No.6637 has also been filed by the petitioners-tenants against the impugned order dated 8.10.2013 passed by the learned Appellate Authority/District Judge, Panchkula whereby allowing modification of its earlier order dated 4.9.2013. As in both the revision petitions, parties are same and identical matters are involved, so this Court proposes to dispose of both these cases together by this single judgment.

2. The case of the respondents (herein) (who were petitioners before the learned Rent Controller) in brief was that the respondent No.1 was the owner of the demised shops No.61 and 62 situated in village Kharak Mangoli, Old Panchkula and respondent No.2 was the landlord of these shops. Shop No.61 was let out to Subhash Ghai, Proprietor of Subhash Ghai & Company for carrying out the business of Canvas, Tarpulins etc. at the rent of Rs.80/- per month in the year 1975 excluding the electricity and water charges. The rent of this shop was increased from time to time and it was Rs.1,000/- per month in the year 1990 excluding the electricity and water charges. The rent of this shop was further enhanced to Rs.1,250/- per month w.e.f. July, 1993 excluding the electricity and water charges.

The demised shop No.62 was also let out to the said Subhash Ghai in the month of July, 1993 for the purpose of expanding his business at the rent of Rs.1,500/- per month excluding the electricity and water charges. Earlier this shop was got vacated from some other tenant and as such the said Subhash Ghai became the tenant in respect of both

the demised shops at the rent of Rs.1,250/- per month and Rs.1,500/- per month, respectively. Said Subhash Ghai died on 14.2.1996 leaving behind the respondents/tenants (now petitioners) as his only legal heirs. The ejectment of the respondents-tenants was sought from the demised shops on the ground of non-payment of rent w.e.f. 1.11.2004 as well as the non-payment of electricity charges since the year 1995. On the back side of the demised shops, there is a *godown* of the petitioners. There are two *chobaras* and two rooms on the first floor of tenanted premises which are in possession of the petitioners. But the respondents were not allowing them to put staircase to approach the first floor of the demised premises. Even petitioner No.1 filed a criminal complaint against the respondents/tenants and others before the Public Relations Grievance Committee, Panchkula. Even on the basis of this enquiry, the respondents were not permitting them to approach the first floor of the demised premises which was in their possession. Then respondent No.1 filed a suit for permanent injunction against the petitioners etc. as a counter-blast to the said complaint of petitioner No.1. Even the respondents are also stated to be habitual defaulters and proceedings for their ejectment qua shop Nos.53 and 60 were also pending against them. In the above-said suit for permanent injunction, petitioners gave statement that they would not dispossess the respondents-tenants from the demised premises except in due course of law and the said suit was disposed of accordingly.

On notice, respondents filed written statement jointly and took preliminary objections that the petition is not maintainable; that

the petitioners have no cause of action to file the same and there is concealment of true facts on the part of petitioners. It was also their plea that suit property has been acquired by the State of Haryana and as such the present petitioners are no more the owners of the demised shops. The demised shops were taken on rent by Subhash Ghai in the year 1975 at the rent of Rs.80/- per month. It is denied that the rent of the shops was ever increased as alleged in the petition. They had paid the rent of the demised shops to the petitioners up to 1.11.2004. An electric meter vide account No.PR-11/2270 was installed in the demised shops previously in the name of petitioner No.1 and the electricity from this meter was also being supplied to the petitioners for their *godown* situated at the back side of the demised shops and two rooms situated on the first floor of these shops. They used to pay their share of the electricity bill and further it was obligation of the petitioners to deposit the same by adding their share regarding the electricity consumption. Since the petitioners did not deposit the amount of electricity bill, the above-said connection was disconnected due to non-payment of electricity bill. Then the respondents started getting electricity supply from meter bearing account No.PR-11/2265 installed in shop No.60 in the name of one Mohan Lal. The respondents are stated to be tenants qua this shop No.60 also. Since the petitioners tried to interfere into their possession qua the demised shops, so as such DDR No.8 dated 5.2.2005 was got registered at Police Post, Sector-6, Panchkula. Then the respondents had also filed a petition under Section 10 of the Haryana (Control of Rent and Eviction) Act to restore the electricity supply to the demised shops. But it was admitted that

Subhash Ghai died on 14.2.1996 leaving behind respondents as his legal heirs. It is specifically denied that the respondents were in arrears of rent qua the demised shops at the rate of Rs.1,250/- and Rs.1,500/- per month. Rather they had reiterated their stand that the rate of rent of each of the demised shop was Rs.80/- per month and that they had paid the same to the petitioners till 1.11.2004.

3. Then the learned Rent Controller made provisional assessment of the rent which was tendered and accepted under protest by the petitioners.

4. The learned Rent Controller after hearing the learned counsel for both the parties and going through the record as well recorded finding on issues No.1 and 2 in favour of the petitioners, on issue No.3 against the petitioners and on the remaining issues against the respondents and ejectment petition was accepted partly. The respondents-tenants were ordered to be ejected from the demised premises on the ground of non-payment of arrears of rent with the condition that if the respondents pay the balance amount of arrears of rent within a period of one month, then in that eventuality they would not be evicted from the demised shops, vide the impugned order dated 23.3.2013.

5. Feeling aggrieved against this judgment, the petitioners-tenants filed an appeal before the learned Appellate Authority, Panchkula which was dismissed by the said learned Appellate Authority vide judgment dated 2.2.2015.

6. Being aggrieved from the judgments of both the Courts below, the petitioners-tenants have come up in instant CR

No.1631 of 2015.

7. It is an admitted fact that during the pendency of the appeal before the learned Appellate Authority, Panckhula, the present petitioners-tenants had deposited a sum of Rs.24,000/- in the Treasury as rent for the period from 31.10.2013 to 31.10.2014 on 5.11.2014 for a period of 13 months and photocopies of the challan receipts in support of it have been brought on the record. Learned counsel for the petitioner-tenants has contended that the petitioners-tenants did not pay the alleged arrears of rent of the prior period for the reason that operation of the order dated 8.10.2013 passed by the learned Appellate Authority, Panchkula with regard to assessment of mesne profits was stayed by a Co-ordinate Bench of this Court vide order dated 6.8.2013 in connected CR No.6637 of 2013. Operation of this order was stayed for the reason that no evidence was led by any of the party to show the rent in the locality for determining the mesne profits before the learned Appellate Authority, Panchkula, when this order was passed. But in the case in hand it is an established fact that the rate of rent of demised shops @ Rs.1,250/- and Rs.1,500/- per month was held by the learned Rent Controller on the basis of rent receipts Ex.P4 to Ex.P9 and one rent agreement Mark-C executed between Kundal Lal, the predecessor-in-interest of the present respondent-landlords and Dr. Varinder Nath Gautam qua shop No.62 which was let out to said Dr. Varinder Nath Gautam vide this rent agreement w.e.f. 30.3.1990 @ Rs.1,500/- per month. This shop was vacated by Dr.Varinder Nath Gautam in the year 1993 and it was further let out to said Subhash Ghai, the predecessor-in-interest of the present

petitioners-tenants w.e.f. July, 1993. These receipts pertained to the year 1993 and 1994 which manifest very clearly that father of the present petitioners (tenants) had been paying the rent of the demised shops at the rate of ₹1250/- and ₹1500/- per month. In the light of this documentary evidence, it is difficult to say that shop No.62 i.e. one of the demised shops which was earlier let out to Dr.Virender Nath Gautam in the year 1990 at the rate of ₹1500/- per month, the same would have been let out to the father of the present petitioners (tenants) on rent at the rate of ₹80/- per month only in the year 1993. So far as the rent receipts Mark RA and Mark RB are concerned, these pertained to year June 1976 and January 1985 qua demised shop No.61. These receipts are rightly ignored by the learned Rent Controller for the reason that as per the case of respondents (landlord) the rent of shop No.61 was enhanced to ₹1250/- w.e.f. July 1993 and shop No.62 was rented out to the father of the present petitioners (tenants) in the year July 1993 on its vacation by its previous tenant-Dr. Varinder Nath Gautam. Moreover in the case in hand, the arrears of rent have been claimed w.e.f. 1st November, 2004 onwards and not of the period prior to this. With this, the claim of the petitioners (tenants) that their father took both demised shops on rent in the year 1975 also stands falsified particularly qua shop No.62.

So on the basis of the above-said rent receipts and rent agreement monthly rent of both the shops was held to be Rs.2,750/- by the learned Rent Controller. This fact was not brought to the notice of this Court by the counsel for the petitioners-tenants at the time of passing of the above-said order dated 6.11.2013 in connected CR No.6637 of

2013. Then interestingly this revision petition was not got decided from this Court and was kept on pending for a period of about one and half years and during its pendency, the main appeal pending before the learned Appellate Authority, Panckula was dismissed and disposed of accordingly vide the impugned judgment dated 2.2.2015 thereby affirming the findings of learned Rent Controller dated 23.3.2013.

8. Vide the above-said order of this Court dated 6.11.2013 passed in connected CR No.6637 of 2013, only the order dated 8.10.2013 passed by the learned Appellate Authority, Panchkula on the review application was stayed. Though, there is no mention in this order about the payment of rent, even then it was established on the basis of facts as well as documentary evidence that the rate of rent of the demised shops is Rs.2,750/- per month. Then in appeal, the learned Appellate Authority, Panchkula vide order dated 4.9.2013 assessed the mesne profits for use and occupation of the demised shops @ Rs.2,000/- per month which apparently does not seem to be correct because when the Rent Controller on the basis of cogent and reliable evidence had concluded the rate of rent of demised shops @ Rs.2,750/- per month, then the mesne profits thereof cannot be held to be less than this amount. So in this situation, the present petitioners-tenants as a dutiful person were bound to pay mesne profits of the demised shops as directed by the learned Appellate Authority, Panchkula vide order dated 4.9.2013 w.e.f. 1.4.2013. Copy of the challan receipt placed on the record by the petitioners-tenants during the pendency of this revision in connected CR No.6637 of 2013 shows that they had deposited the rent qua the demised

shops in the sum of Rs.24,000/- for a period of 12 months w.e.f. 31.10.2013 to 31.10.2014 on 5.11.2014. So the entire intention of the petitioners (tenants) from their abovesaid conduct is only to prolong the matter for one reason or the other to retain their possession over the demised shops for the maximum period and also to avoid the complete payment of arrears of rent since the year 1st November, 2004 by creating confusion.

9. When the main appeal has been dismissed by the learned Appellate Authority, Panchkula vide the impugned judgment dated 2.2.2015, then the CR No.6637 of 2013 filed against the order dated 8.10.2013 has virtually been rendered infructuous. If the petitioners-tenants were serious with the proceedings of this revision, then certainly they would have have got decided this revision prior to the disposal of the rent appeal decided by the learned Appellate Authority, Panchkula vide impugned judgment dated 2.2.2015.

10. When the tenancy of the petitioners-tenants has been terminated on the passing of the impugned judgments against them qua demised shops, then they are legally as well as morally bound to pay the mesne profits for their use and occupation. Even though, the interim order dated 6.11.2013 of this Court in CR No.6637 of 2013 is silent about the payment of the mesne profits as well as the arrears of rent, if any, even then that does not mean that petitioners-tenants are permitted to use the demised shops without the payment of any rent as well as the mesne profits. When CR No.6637 of 2013 has been rendered infructuous on the disposal of the main appeal by the learned Appellate Authority,

Panchkula vide judgment dated 2.2.2015, then the above-said interim order dated 6.11.2013 of this Court passed in CR No.6637 of 2013 also goes with this.

11. Then it was also case of the petitioners (tenants) that land underneath the demised shops has been acquired by the Haryana Urban Development Authority and, as such, the present respondents (landlords) are no more owners of the demised shops and hence legally they cannot claim any rent/mesne profit qua the demised shops.

The learned Rent Controller in Para No.21 of the impugned judgment dated 23.03.2013 has recorded the finding that the proceedings with regard to acquisition of land beneath the shops in dispute are under challenge before the Hon'ble High Court vide writ petition in which the land acquisition proceedings are stayed by the Hon'ble High Court. The petitioners (tenants) did not lead any evidence to contradict this finding of the learned Rent Controller. Moreover in the case in hand it is admitted fact that both the demised shops were taken on rent by the predecessor-in-interest of the petitioners (tenants) from the predecessor-in-interest of the respondents (landlords). So in these circumstances tenant has no right to deny the relationship of landlord and tenant between the parties qua the demised shops. Even in the written reply, their plea was that they admit petitioner No.2 as their landlord regarding the shops in question in order to avoid their ejectment. So the above contention of the respondents (petitioners herein) is also declined and disposed of accordingly.

12. In the light of the above discussion, the findings

recorded by both the Courts below are found to be well reasoned being recorded on the basis of the evidence of both the parties after proper appreciation thereof. So these revision petitions being devoid of any merits stand dismissed and disposed of accordingly.

Since both the above said petitions have been dismissed and disposed of, the miscellaneous application pending, if any, in both the petitions, also stands automatically disposed of.

1.4.2015
Brij

(GURMIT RAM)
JUDGE

1. To be referred to the Reporters or not? Yes/No
2. Whether the judgment should be reported in the Digest? Yes/No