

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

CR No.1710 of 2015(O&M)

Date of Decision : 25.5.2015

Ranjit Singh through his LRs Asha Devi and ors.

.....Petitioners

Versus

Suresh Kumar

.....Respondent

CORAM:- HON'BLE MR. JUSTICE GURMIT RAM

Present: Mr. Vishal Sodhi, Advocate for the petitioners.

Mr. Arvind Kashyap, Advocate for the respondent

GURMIT RAM, J.

This revision petition has been instituted at the instance of petitioners herein (tenants) against the order dated 8.8.2014 passed by the Rent Controller, Amloh vide which petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as '*the Act*') for the the ejectment of the tenants from the demised house was accepted and the judgment dated 16.12.2014 passed by the learned Appellate Authority, Fatehgarh Sahib vide which the appeal of the tenants preferred against the above said order dated 8.8.2014 passed by the learned Rent Controller was dismissed.

2. The case of the respondent herein who was the landlord before the learned Rent Controller in nutshell was that the demised house as detailed in the head-note of the petition was earlier owned by Sher Jang Singh and his wife. Sher Jang Singh expired on

3.2.1992 leaving behind his son Sukhpreet Singh and daughter Ravinder Kaur as his LRs. His wife pre deceased him in the year 1991. Mutation of the properties left by the said Sher Jang Singh and his wife was sanctioned in the name of said Sukhpreet Singh and Ravinder Kaur being their only children/LRs. They further sold the demised house to the respondent herein(landlord) vide two registered sale deeds No.2777 dated 26.11.2008 and 3487 dated 4.2.2009. After the death of their parents, said Sukhpreet Singh and Ravinder Kaur started residing with their maternal grandmother. The demised house was let out to respondent @ Rs.1,000/- per month. Since the petitioner stepped into the shoes of previous owners namely Sukhpreet Singh and Ravinder Kaur, so he became the landlord of the demised house. There exists relationship of landlord and tenant between the parties. The eviction of the tenants from the demised house was sought on the grounds of non-payment of rent w.e.f. February 1993; that the respondent herein (landlord) requires the demised house for his personal necessity and that petitioners herein (tenants) have made alteration in the rented premises without the knowledge and consent of respondent herein (landlord) which has diminished its value and utility. It was also the case of the respondent herein that he was residing in some rented accommodation consisting of one room, kitchen, bathroom in House No.216, Sector 4, Ward No.3, Guru Nanak Colony, Gali No.2, Mandi Gobindgarh and paying Rs.2,000/- per month as rent. His landlord had been asking him to vacate the said rental premises. The family of the petitioner is consisting of his wife and two school going children studying in Ist Class and 4th Class. The demised house is the only residential

property owned by the respondent herein which can fulfill his need of personal use and necessity. Hence, the instant petition.

3. On notice petitioner herein (tenant) filed a reply admitting Sher Jang Singh and his wife to be the owners of the demised house. The rate of rent was stated to be Rs.500/- per month which he had paid to Gurcharan Singh and after his death, his wife Bhinder Kaur had received the same from him up to March, 2006, but without issuing any receipt regarding receiving of rent. Then it was also admitted that demised house has been purchased by the respondent herein(landlord) vide two sale deeds as alleged in the petition. It was further his stand that the landlord has no right to claim the rent before 26.11.2008 since he was not the owner of the demised house prior to this date. It was denied that the demised house is required by the respondent herein (landlord) for his personal use and occupation. Rest of the averments were also denied by the tenant. It is pertinent to mention here that during the pendency of the petition before the learned Rent Controller, the original tenant Ranjit Singh expired and his LRs were made as a party vide order dated 1.9.2011.

4. Learned Rent Controller after hearing the learned counsel for the parties and going through the record as well accepted the ejectment petition filed for eviction of the tenants from the demised premises vide impugned order dated 8.8.2014.

5. Feeling aggrieved from this order, the tenants preferred an appeal before the learned Appellate Authority, Fatehgarh Sahib, which was dismissed vide impugned judgment dated 16.12.2014.

6. Being dissatisfied with the order/judgment delivered by both the Courts below, the petitioners-tenants have come up before this Court by way of the instant revision petition. Record of both the Courts below was also requisitioned.

7. Learned counsel for the petitioners was heard and the record of both the Courts below (photocopy) as available on the file was also perused.

8. The learned counsel for the petitioners-tenants has mainly contended that there is legal flaw in the petition since all the ingredients of Section 13(3)(a)(i) are not pleaded in the petition and that both the Courts below had failed to take judicial notice of this legal flaw while passing the impugned order as well as judgment. In support of his contention, he has referred to an authority as delivered in the case of **Banke Ram Versus Shrimati Sarsvati Devi, 1977 AIR (Punjab) 158 (Full Bench), Banwari Lal Versus Ram Parkash and another, 2009(2) R.C.R.(Rent) 160(P&H) and Ajit Singh and anr. Versus Jit Ram and anr., 2008(4) R.C.R.(Civil) 390(SC).**

9. For the proper appreciation of the above contention of the learned counsel for the petitioners herein (tenants), I deem it necessary to analyse the petition as presented before the learned Rent Controller. Para No.11 of this petition is found to be relevant for the above-said purpose which reads as under:-

“11. That the petitioner has not occupied any other such building in the urban area of the Municipal Council Mandi Gobindgarh. The petitioner has not vacated any such building within the area of Municipal Council Mandi

Gobindgarh, after the commencement of East Punjab Urban Rent Restriction Act. ”

Then in para No.9(ii), it is also mentioned that the petitioner requires the demised house for his bonafide personal necessity. The house in dispute is the only residential house owned by him which can fulfill his personal necessity.

10. So from the perusal of the above-said pleadings as put-forth by the respondent herein(landlord) in the petition, it is held that there is a complete and proper compliance of the provisions as provided under the above-said Section 13(3)(a)(i) of the Act. The above contention of the learned counsel for the petitioners herein (tenants) is held to be totally misconceived and the same is found to have been made without going through the contents of the petition in a right manner. So as such the case laws as cited supra by the learned counsel for the petitioners herein (tenants) have no bearing on the facts of this case.

11. Then the learned counsel for the petitioners herein(tenants) has also submitted that both the Courts below have also failed to properly appreciate the statement of PW3 Raj Rani as made by her in the cross-examination and on this account also, the findings given by both the Courts below are liable to be set aside being perverse and against the evidence on record. This Raj Rani (PW3) in her affidavit Ex.PW3/A deposed that she is the owner of House No.216, Sector 4-A, Ward No.2, Mandi Gobindgarh which she rented out to the respondent herein (landlord) on rent of Rs.2,000/- per month about four years back. He was residing in her said house as a tenant alongwith his family. Now she requires this house for her own personal use and as such she asked

him to vacate the same. This affidavit was filed before the learned Rent Controller on 6.9.2012.

In her cross examination recorded on 1.5.2013, she deposed that she got vacated her above-said house from Suresh Kumar and others in April 2013, who is residing now in House No.227 adjacent to their street. Then there is nothing wrong in her said statement if read as a whole i.e. chief and cross-examination. At the time of the filing of the petition as well as at the time of tendering of affidavit Ex.PW3/A, the respondent herein (landlord) was residing in House No.216, Sector 4-A, Ward No.2, Mandi Gobindgarh, which she (PW3) got vacated from him as per her above-said statement in the month of April, 2013. So there is no inconsistency in her statement. If the respondent-landlord had started residing in House No.227, when PW3 Raj Rani had got vacated from him, her said house bearing No.216, Sector 4-A, Ward No.2, Mandi Gobindgarh in which he was earlier residing on rent till April, 2013, then no fault can be found against the respondent herein because in that event he was to reside in some accommodation along with his family and not to sit on a road side with his legs crossed. Then it is also in her cross-examination that respondent herein has property in focal point where machinery has been installed. Such like property, if any, cannot be used for the residential purpose. So the above contention of the learned counsel for the petitioners herein (tenants) is also held to be devoid of any merit and the same stands declined and disposed of accordingly.

12. Then the learned counsel for the petitioners herein(tenants) has laid much stress on the point that both the Courts

below have also failed to consider the statement of RW1 Chhinder Kaur while passing the impugned order and the judgment and on this ground also, same are not tenable either on facts or under the law. This witness in her statement tendered her affidavit Ex.RW1/A. In para No.4 of her affidavit, it has been incorporated that petitioner is also having house bearing No.343, Sector 19-B, Mandi Gobindgarh in which there is a shop on ground floor and residential house on the first floor. Then in her cross-examination this witness has stated that she did not say anything in her affidavit about House No.343, meaning thereby that whatever has been stated by her in her alleged affidavit Ex.RW1/A qua this house is incorrect. Then she admitted that the respondent herein has two children i.e. one son and one daughter. Then no documentary evidence was brought on record to show that the present respondent (landlord) is really the owner of the above-said House No.343, Sector 19-B, Mandi Gobindgarh. The mere oral assertion made by a witness that so and so is the owner of some property is not enough to prove the factum of ownership of the alleged property without bringing on record documentary evidence pertaining to its title. So the statement of RW1 Chhinder Kaur does not support the case of the present petitioners-tenants from any angle. So the above contention of the learned counsel for the present petitioners-tenants is also found to be incorrect and declined accordingly.

13. The respondent herein (landlord) appeared in the witness box as PW1 and in his affidavit Ex.PW1/A, he reiterated his stand vehemently qua his claim that he requires the demised house for his

personal use and occupation as well as for the members of the family. This fact was also further corroborated by PW2 Ramesh Chander in his affidavit Ex.PW2/A and also by PW3 Raj Rani in her affidavit Ex.PW3/A. Their statements are also found to be suffice to prove the fact that the respondent herein (landlord) did not have any other residential accommodation within the municipal limits of Amloh except the demised house. The petitioners herein (tenants) also utterly failed to rebut this evidence of the respondent herein to the effect that he has no other residential property within the municipal limits of Amloh except the demised house and that he requires the same for his personal use and occupation as well as family members. If the landlord succeeds to prove that he has no residential property except the demised property within the limits of urban area concerned, then the onus shifts upon the tenant to rebut the same by leading cogent and reliable evidence.

14. In the light of the above discussion, the instant revision petition being meritless stands dismissed and disposed of accordingly. Record of both the Courts below be sent back to the quarter concerned along with copy of this judgment.

Since the main revision petition has been disposed of, the miscellaneous application, if any, also stands automatically disposed of having been rendered infructuous.

25.5.2015
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