

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 483 of 2000
Date of Decision : 07.01.2015

Tarsem Lal

....Petitioner

Versus

Rajiv Chopra etc.

...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: Ms. Deepali Puri, Advocate
for the petitioner.

Mr. Ankur Gupta, Advocate
for Mr. Arvind Mittal, Advocate
for the respondent.

R.P. Nagrath, J. (Oral)

This revision has been filed in terms of Section 15 (5) of the East Punjab Urban Rent Restriction Act, 1949 (for short 'the Act'), to challenge the order passed by the Rent Controller vide which *ex parte* order of eviction was passed and that of the Appellate Authority confirming the order of eviction mainly on the ground of non-payment of rent.

The Appellate Authority has not given decision on the other grounds of eviction i.e. the change of user of premises for the purpose other than it was let and that the petitioner-tenant committed such acts which have statedly diminished the value and utility of the demised premises materially.

The petitioner-tenant initially filed appeal against the *ex*

parte order of eviction dated 03.5.1993 which was decided by the Appellate Authority on 30.10.1996, holding that there was no proper service of the petitioner before the Rent Controller. The matter was remitted to the Rent Controller for a fresh decision after affording proper opportunity to the parties to prove their respective claim.

CR No. 196 of 1997 was filed by Roop Rani the predecessor of respondents which was decided by this Court on 20.05.1997, setting aside the order of the Appellate Authority with a direction to the Appellate Authority to take the appeal on its board and decide the same in accordance with law. It was further observed that in case the Appellate Authority finds that further enquiry is required to be made in regard to the service of summons on the tenant, then the Appellate Authority may do so either itself or get a report in this regard from the Rent Controller. On 17.07.1997, the Appellate Authority sent back the matter for further enquiry to the Rent Controller with a direction to record finding on the fact whether service of summons on the tenant was duly effected or not.

The Rent Controller recorded evidence on the issue and sent report with the findings dated 29.10.1997, concluding that from the evidence produced by both the parties it was proved that the petitioner-tenant was duly served. The learned Appellate Authority disagreed with the findings of the Rent Controller about the valid service of the petitioner-tenant and set aside the order passed by the Rent Controller and remanded the case back to the Rent Controller for fresh decision with a direction to give proper opportunity to the parties to prove their claim. In the order of the Appellate Authority

dated 18.11.1997, it was further observed that the rent has since been deposited by the petitioner-tenant.

Roop Rani-landlady then filed CR No. 5383 of 1997 before this Court and the order of the Appellate Authority was set aside by observing that the Appellate Authority neither appraised the facts nor the evidence has been properly scrutinized. The Appellate Authority was again directed to make a decision on the controverted facts and other co-related issues that were involved.

The Appellate Authority heard the parties and passed the impugned judgment dated 21.10.1999 by meticulously scrutinizing the evidence led by the parties with regard to service of the petitioner-tenant in the case when he was proceeded *ex parte* and came to the conclusion that the petitioner was duly served.

I have perused the order passed by the Appellate Authority and find that there has been proper and elaborate appreciation of evidence on the issue by the Appellate Authority confirming the report of the Rent Controller about valid service of the petitioner-tenant and there is no scope of interference in exercise of revisional jurisdiction of this Court. That finding is confirmed.

However, the learned Appellate Authority after holding that the petitioner-tenant was duly served in the eviction application ultimately dismissed the appeal holding that the rent was not paid w.e.f. 01.04.1986 but the Appellate Authority did not deal with the other grounds set up by the respondent-landlady for seeking eviction i.e. ground of the change of user of the demised premises for a purpose other than for which it was let and whether the petitioner-

tenant is guilty of such act which have materially diminished the value and utility of the said premises.

On the ground of non-payment of rent, learned counsel for the petitioner, vehemently, contended that the petitioner is entitled to be heard on the principle laid down by the Hon'ble Supreme Court in **Rakesh Wadhawan and others vs. Jagdamba Industrial Corporation and others, 2002 (5) SCC 440.** For that purpose, learned counsel for the petitioner also referred to the order passed by the Appellate Authority on 11.09.1993, when the appeal was presented and it was directed that operation of the eviction order would stand stayed till further orders provided the petitioner-tenant deposits arrears of rent before the Rent Controller and also deposits future rent at the rate determined by the Rent Controller whenever it becomes due. Learned counsel for the petitioner submits that in fact upto date rent was paid in terms of the aforesaid order.

In view of the aforesaid discussion and findings that the Appellate Authority has not in fact decided the case on the other ground of eviction also as specifically directed by this Court in the order dated 02.12.1998 in CR No. 5383 of 1997, the impugned order passed by the Appellate Authority is set aside and the matter is remitted to the Appellate Authority for a fresh decision in accordance with law except the issue of valid service of the petitioner-tenant which has been held against the petitioner on proper appreciation of evidence by both the courts below. The Appellate Authority would also consider the contention with regard to the principle laid down by the Apex Court in ***Rajesh Wadhawan's case (supra)*** and make

determination on the other grounds of eviction set up by the respondents. The parties are directed to appear before the Appellate Authority on 30.01.2015 and the Appellate Authority would proceed further to decide the matter afresh in accordance with law keeping in view the observations made by this Court. As the rent petition is pending since the year 1991, the Appellate Authority is directed to dispose of the appeal within a period of three months from the date on which the parties are being directed to appear before it.

January 07, 2015
jk

(R.P. NAGRATH)
JUDGE