

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

Civil Revision No.4663 of 2004 (O&M)

Date of decision: 30.04.2015

Rajinder Singh

... Petitioner

versus

Harjit Singh

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Arun Jain, Senior Advocate,
with Mr. Arnav Kumar Sood, Advocate,
for the petitioner.

Mr. H.S. Saini Advocate,
for the respondent.

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

K.Kannan, J. (Oral)

1. Issue of non-payment of rent, the only relevant point

1. The revision petition is at the instance of the tenant challenging the orders passed by the Rent Controller and the appellate authority directing eviction on the ground of non-payment of rent alleged by the landlord as having occurred from July 1990 to April 1994. There was an additional ground of personal necessity also made by the landlord, but it has been declined by both the courts below. I asked the counsel for the respondent whether he

would place his arguments on personal necessity but he says that he will confine his arguments only to the issue relating to the non-payment of rent as a ground of eviction. The case, therefore, would take attention only to examining whether the plea of non-payment of rent was established or not.

II. Circumstances leading to remand in the first round of litigation

2. The landlord sought for eviction on a plea that the rate of rent was ₹2,200/- and the tenant had failed to pay rent from July 1990 to April 1994, that is, just prior to month when the landlord filed the petition for eviction. The tenant's contention was two-fold: One, the rate of rent was only ₹650/- and not ₹2,200/- per month as alleged by the landlord. He also denied that he stopped paying rent from July 1990 and contended that he had paid rent for all the times till just prior to the filing of the petition and that there was no default in the payment of rent. The second contention was that the relationship between the landlord and the tenant had ceased with the landlord offering to sell the property orally for ₹2,15,000/- and in token of his acceptance to sell the property, he received an advance of ₹5,000/- on 27.04.1994 and passed a receipt therefor to the petitioner. According to him, therefore, the continuance in possession by the tenant ceased to be in his capacity, as such and was in his capacity as a purchaser and the petition was, therefore, incompetent.

3. The Rent Controller originally found that the plea of the landlord that the rent was ₹2,200/- per month was not correct and that it was only ₹650/- per month. He also held that there was no default in payment of rent and the default, as pleaded by the landlord, had not been established and on the second ground relating to the personal necessity, the court found that it was not established and ultimately proceeded to dismiss the landlord's petition.

4. The landlord preferred an appeal against the judgment and argued, inter alia, that when the tenant was taking up a plea of denial of jural relationship of landlord and tenant and the Rent Controller was not justified in putting the issue under carpet, as it were, and deciding only on two grounds which were urged by the landlord. The appellate court, therefore, held that the case would require to be considered on the issue relating to the subsistence of jural relationship on a consideration on whether the alleged agreement of sale propounded by the tenant was true or not. Even while holding that the case would require to be considered by recording a specific finding on this issue of jural relationship, he stated in a rather unusual fashion that the case would require to be decided afresh in the light of the finding to be recorded under Issue No.4 which was the issue relating to the alleged agreement propounded by the tenant.

III. Appellate Court has no power of remand; if left unchallenged, the Rent Controller will be bound by the terms of remand

5. Even before adverting to the reasoning adopted by the Rent Controller after remand, I must observe that the appellate authority had not set aside or modified any finding rendered by the Rent Controller relating to its finding that the default in payment of rent had not been established and that the personal necessity had not also been proved. It has been held in several decisions that the appellate authority exercising power under the Punjab Rent Restriction Act does not have a power of remand and any such exercise must be taken as illegal. At best, an appellate authority has only a power to call for a particular finding on any issue that was left undecided or on any subsequent event which may have come about and relevant for consideration. (see: **Banarsi Dass Versus Smt. Jeeto-1998(1) RCR (Rent) 288; Harbans Lal Versus Sham Dass and another-1991(1) RCR (Rent) 602; Som Nath Kapur Versus Tilak Raj and another-1980(1) RCR (Rent) 684; Smt. Maha Devi Versus Ram Richhpal-1975 RCR (Rent) 529; and Suchitra Sebastian and another Versus Michael Arul-2010(1) RCJ 349**).

6. In a recent decision of this court in **Ujagar Singh and another Versus Asha Rani and others-2013(2) RCR (Civil) 195**, this court held that even if the appellate authority has no power to remand but order of remand itself is not challenged, it cannot be

taken that the order of Rent Controller after remand would be a nullity. This is how, I propose to examine the case.

7. It was passing an order on 27.11.2001 directing the case to be decided afresh in the light of the finding to be recorded in Issue No.4 which was without jurisdiction. I am stating this only because the entire proceedings of the Rent Controller that happened after the remand, have taken rather a curious turn. The tenant himself did not challenge the correctness of the order dated 27.11.2001 remanding the matter, but the Rent Controller was still to be convinced that he was following the directions of the appellate authority to a T and not traversing on subject which was not directed for consideration by the appellate authority.

8. Assuming that the Rent Controller could have had no option but to take up the matter that was remanded to him for consideration, constrained as he must have been by judicial discipline to conform to the direction of the appellate authority, he could have entered his finding only with reference to the existence of jural relationship or not. If he found that such a relationship existed, nothing else could have mattered, for, there was already a finding that there was no default in payment of rent between the period July 1990 to April 1994. I have already observed that the appellate authority had not set aside its finding when the remand was for a particular purpose, there was no justification for a Rent

Controller to open an issue of what had been already concluded. Indeed the order of remand itself seems meaningless to me, for, with or without a finding of the existence or otherwise of jural relationship, if the petitioner's action for eviction could not be sustained for lack of proof for non-payment of rent or for personal necessity, there was nothing else for consideration afresh. The direction of the appellate court and the exercise undertaken by the Rent Controller, therefore, were literally bringing the whole judicial exercise to an absurd situation.

9. Unlike several rent control legislations which allow for a landlord to seek for ejectment on the ground of bona fide denial of title, the Punjab Rent Restriction Act itself does not contain any such provision. The denial by a tenant does not entail ejectment, the same way as it might become possible for proceedings under the Transfer of Property Act where the Rent Act is not applicable, in that Section 111 determines tenancy, inter alia, on the ground of denial of title. The Transfer of Property Act itself also, in so far as it relates to the provision of lease is not directly applicable in the State of Punjab, but the principles have been always applied. The issue of whether the tenant could have been evicted by the plea taken by the tenant is a moot point, but I will still state this because the counsel for the respondent was reading at length from the expansive judgments written by the authorities below that the tenant was never

prepared to accept the relationship of landlord and tenant and, therefore, there was no scope for consideration of the provisional rent.

IV. No scope for determination of provisional rent in the face of denial of title after the period commencing from the filing of the petition

10. It is rather a strange argument, for, there is no issue of whether the court was required to make a determination of provisional rent or not. Indeed although an argument was made by the learned senior counsel that there could not have been an order of eviction without calling upon the tenant to make the payment of rent determined by it, I will find no scope for the applicability of the decision of **Rakesh Wadhawan Versus M/s Jagdamba Industrial Corporation-2002(1) RCR (Rent) 514**. The decision will no doubt apply in every case where there was a dispute regarding quantum of rent. Here there was a dispute of quantum but a direction to make payment would have become unnecessary because the tenant declined to pay rent in future by denying the relationship. The issue before the Rent Controller was only whether the landlord had established the case of non-payment of rent as alleged by him between the period July 1990 to April 1994. I will hold that there was no scope for the two courts below to consider whether any opportunity to pay future rent should have been given to a tenant in a situation where there was no determination of provisional rent.

11. There was, however, a sure duty to determine what the rent was and there was default of that rent to secure eviction. The landlord was pleading the liability of the tenant was @ ₹2,200/-, while the tenant was contending that the rent payable upto April 1994 was ₹650/- per month. It was only subsequent to the period of April 1994 when the eviction petition was filed that the tenant said that his relationship as a tenant no longer existed in the light of his contention that he had offered to purchase the property and his status became that of a purchaser.

V. Effect of agreement of sale on subsistence of jural relationship

12. Before undertaking the issue of whether there existed a default in payment of rent, I must consider whether the relationship of landlord and tenant persisted or not to set the record straight. The tenant's whole reliance was on Ex.R1 and the two witnesses, who had signed in the document and who were examined in support of his version that he had offered to purchase the property for ₹2,15,000/- and paid ₹5,000/- as advance, which was receipted under Ex.R1. The authorities below have held that the document could not be true, although the execution of the document with the signature of the petitioner-landlord was admitted by the landlord, but wanted to qualify by his version that he offered to sell the property to one Bhagat Singh and the amount of ₹5,000/- was also paid only by Bhagat Singh but the document was allowed to be

retained by the tenant because the tenant was in possession of the property and Bhagat Singh hoped to take the sale deed and take back also Ex.R1 from the tenant. The two courts below have held that the document Ex.R1 itself was not true, took also note of the fact that there was no claim for specific performance and, therefore, held that the status of the tenant as such had not ceased and the jural relationship subsisted.

13. I would place the reasoning differently, for, a tenant, who enters into an agreement of purchase from the landlord, cannot cease to be a tenant unless the purchase agreement itself contains an express understanding between parties that the relationship was to cease and the tenant would cease to be liable to pay the rent after the agreement. Without a specific stipulation changing for character of possession, there could never be merger of interest of a tenant as that of a purchaser under merely an agreement of purchase. In **P. Veerappa Versus M.A. Mohamed Amanulla-(1996) 1 Supreme Court Cases 415**, the Supreme Court held that if there was an agreement to sell between the landlord or tenant and the tenant had filed the suit for specific performance resulting in compromise, when the tenant agreed to pay enhanced sale consideration and also agreed to pay arrears of rent till the date of completion of sale, the court held that when the tenant failed to pay the enhanced sale price as per compromise, the tenant's right will still be seen as under the

landlord by the previous tenancy and his right cannot be merged with his right as agreement holder. The court held that when the agreement did not take off, the pre-existing right of tenant should revive. The parties will be bound by the relationship as landlord and tenant. The Karnataka High Court in **Rangarao Ramarao Deshpande Versus Channappa Basappa Lakamanahalli and others-AIR 1975 (Karnataka) 155**, Mysore High Court in **Champalal Versus Sumithramma-1972 RCR (Rent) 946**, Gujarat High Court in **Vadodaria Vadilal Hirachand Versus Thakar Jayantilal Maganlal-1996(1) CurCC 434** and Madras High Court in **Govindaswami Pillai Versus Manoranjitham Amal and another-1998(3) CTC 200** have held that agreements of sale do not create any interest in property and there is no scope of merger of a larger estate of ownership to accrue to a tenant. A sale deed will operate differently, for, the full transfer of ownership of the landlord, if he was the owner, will create a merger of interest of the tenancy right with the larger right as an owner and it would be not possible that a person could be a tenant under himself as an owner. Pleas of merger and proof have always come in situations where a tenant became an owner of the property, if the transfer was by the landlord himself or under the circumstances when the landlord, if he was not himself transferor, was prepared to accept the truth of transfer and ownership of the tenant and forsakes the jural

relationship in any other transaction lesser than the transfer of whole of interest of the leasehold. The tenant will continue in his capacity as such and he cannot set up a plea of cessation of a right as a tenant in any other situation.

VI. Consideration of the core issue of non-payment of rent

14. All this would lead to only one situation that in the absence of express provision under the Rent Act for ejectment on the ground of denial of title would require us to examine whether the plea of non-payment of rent during the requisite period was established. I have already observed that the initial finding of the Rent Controller that such a contention was not established by the landlord could not have been reversed after the remand for two reasons: (i) the remand order itself was bad and (ii) the appellate court had not set aside the finding of the Rent Controller that the plea of non-payment of rent had not been established. If the Rent Controller was, therefore, undertaking a fresh exercise and in a still higher forum, the same mistake was committed for re-examination of the issue of whether the payment of rent was established or not, I must hold that the reasonings were flawed by a complete lack of jurisdiction for the courts to undertake such an exercise.

15. It may seem unfair to the landlord and more so to the counsel, who passionately espouses his cause that I must trash all arguments by lack of jurisdiction. I have, therefore, attempted to see

the nature of evidence to examine whether the evidence could be supported. If the landlord was contending that the rent was ₹2,200/- and the two courts have concurrently held that the rate of rent, as stated by the landlord, was not correct and the rent was only ₹650/- per month, the landlord takes the first beating of his own version being not accepted by both the courts. If the rent was only ₹650/- per month, the landlord was trying to state that for full 4 years, the tenant did not pay the rent and he, therefore, contended that he sought the intercession of Bhagat Singh to prevail on the tenant to pay the arrears. Bhagat Singh gave evidence that he met the tenant not in April 1994 but soon after the first default took in July 1990 and in the month of August 1990, the tenant paid rent at that time. If Bhagat Singh's evidence must be accepted to that extent even the beginning of the month of default, as contended by the landlord himself, becomes unworthy of acceptance. His contention, therefore, that the tenant was in arrears from July 1990 cannot be true, for, his witness would state that he collected the rent in August 1990 on behalf of the landlord and handed it over to the landlord.

(i) Evidence of landlord of non-payment of rent, unnatural

16. There is something much more unnatural about the whole contention where a person who comes to court with a particular plea regarding the rate of rent not being able to establish the same secures, however, a favourable finding that his other

version regarding non-payment of rent ought to be true. The learned senior counsel appearing on behalf of the tenant would argue that it was most artificial that the tenant would not pay rent for 4 full years and the landlord would be prepared to receive ₹5,000/- from him on 27.04.1994 and issue a receipt in the letterhead of the tenant's printing press. If the arrears of rent were more than ₹30,000/-, it was inconceivable as to how the landlord could have merely received ₹5,000/- as a token money for sale of the house. This would require me to examine whether Ex.R1 was true, for, considerable time was consumed in the respondent's reading of the portions of the judgment of the Rent Controller and the appellate authority in that regard. Ex.R1 itself was not denied in full. The landlord's evidence was, "it is correct that Ex.R1 was given by me to Sh. Bhagat Singh. Mark A is my signature on Ex.R1." Two things would be evident, the signature found under Ex.R1 is that of the landlord. He does not say anywhere that the signature was written on a blank paper. He says the document was written and given by him to Bhagat Singh. The point that has to be seen whether such an explanation that this document was handed over to Bhagat Singh could be believed. Curiously, it is this contention of the landlord that was accepted by the two courts below. Ex.R1 in its recitals contains just 3 lines written in hand which if reproduced, reads thus:-

“Received a sum of Rs.5,000/-
as token money for sale of house
No.2103/19C, Chd.

Sd/-		Sd/-
(BALWINDER SINGH)		(HARJIT SINGH)
S/o S. Bachint Singh		S/o S. Sukhwant Singh
430A Phase II Ind. Area		429/44 A CHD
CHD		Sellers
Sd/-		
(RAGABIR SINGH)		(RAJINDER SINGH)
S/o S. Gurmukh Singh		RAJ)
442 A Phase II Ind Area		S/o S. Sarain Singh
CHD		2103/19C CHD
		Purchasers”

In between the signatures of the parties and witnesses in a space which was still available, revenue stamp has been affixed. The landlord wanted to give an explanation that he received ₹5,000/- and issued this receipt to Bhagat Singh for his offer to sell the property to him. The document was, however, retained by the tenant because the tenant was in possession of property. Nothing can be more absurd than such an explanation. A property, which is offered to be sold by the landlord to Bhagat Singh, must be in the custody of Bhagat Singh. If the tenant was retaining the document, it could not be in any situation other than in a situation of intense trust in the tenant. It is inconsistent with the landlord's case that the tenant had not paid rent for 4 years and he was entrusting the document to such

a tenant for safe custody. The production of the document from the tenant himself ought to nail the white lies dished out by the landlord before the Rent Controller.

(ii) Receipt issued by landlord, even if not lending proof of terms of sale, is relevant to consider case of default of rent

17. The courts below were derailed to examine whether this document could be given effect to or not. It need not have been given effect at all, for, the court was not considering a case of specific performance of the oral agreement. The document was used only for a limited purpose of seeing two aspects: (i) whether jural relationship between the landlord and the tenant subsisted; (ii) whether the case of non-payment of rent could be true if the landlord was receiving some money from the tenant as contended by him. We have already seen that a jural relationship cannot cease by a mere agreement to sell. There will be so many other aspects which may come in the way if we are examining the case of specific performance. Vague terms under the sale agreement cannot make possible an enforcement. A recital of a sale consideration is the most important aspect and if the sale consideration was not recited under the agreement, it would be difficult to make possible an enforcement of the document. The document was, however, surely relevant for considering whether the landlord's plea that he had not received the rent could be true or not. In my view, if we discard the arguments that the document was meant to be handed over to Bhagat Singh and

must take this to be as merely an aborted attempt to sell the property to the tenant himself, then the receipt of more than ₹5,000/- which I will hold as receipt by the landlord only from the tenant. His plea that the tenant was already in arrears for merely 4 years cannot be true. The first finding entered by the Rent Controller that there was no arrears of rent was, therefore, the most natural finding under the given circumstances. Bhagat Singh himself has been examined in this case and he also attempted to say that ₹5,000/- was paid by him and it was meant to be an earnest money for the purchase of property. It is no body's case that such a purchase was ever made by Bhagat Singh and his own explanation for handing over the document in the hands of the tenant is most artificial that he put it in the hands of the tenant only because he was in his possession. One does not follow the other by any stretch of logic.

(iii) Finding of facts by courts below perverse

18. It was argued with vehemence that this court will not reopen an issue of fact as laid down by the Supreme Court in **Hindustan Petroleum Corporation Limited Versus Dilbahar Singh-2014(4) RCR (Civil) 162**. I have no difficulty in accepting this, but the very same judgment carves out an exception for an intervention that will always be possible for perverse appreciation of facts and I would find every circumstance exists for intervention for the finding of non-payment of rent during the relevant period. I may

not reproduce the entire reasoning which I have made already but if I may flag the important points: (i) the Rent Controller at the first instance had already found on a question of fact and on appreciation of evidence that the case of non-payment of rent had not been established; (ii) the order of remand by the appellate authority was incompetent and the appellate authority had not set aside the finding already rendered by the Rent Controller in the court of first instance; (iii) if a remand were to be seen as competent for any reason, it ought to be confined only for entering an adjudication on what the Rent Controller was directed to do. The direction was for consideration of the subsistence of jural relationship. Any other finding could not have been made by the Rent Controller after remand. The fresh finding of non-payment of rent by the Rent Controller was not competent, for, it was not a subject of remand; (iv) the perversity of the finding is reflected from the fact that it failed to note that Ex.R1 was literally admitted by the landlord but he was trying to give an explanation for receipt of ₹5,000/- as advance for sale which he intended to make to Bhagat Singh which is absurd from the point of view of the fact that the document was written on a letterhead of the tenant and there is simply no reason or logic for the landlord to make such a letter in favour of Bhagat Singh and hand it over to the tenant.

(iv) If landlord's plea of quantum of rent is disbelieved, no justification to accept plea of default

19. Even apart from the points which I have elicited above, our own court's approach regarding the assessment of the quality of evidence in a case where the landlord sets up a particular rate of rent as contracted and when the court finds that such a version is false, even the version that the rent was not paid could not be taken as correct. In **Fakir Chand and another Versus Bhagwan Dass-(1994-3) Vol. CVIII, PLR 129**, (Justice Ashok Bhan as he then was), this court held that the landlord would not normally sit quiet for a period of three years if the rent had not been paid to him for the said period. A person, who had been disbelieved with regard to the rate of rent, could not be believed for the period for which the rent had fallen due. Yet another Judge of this court (Justice V.M. Jain) in the judgment in **Sukhdev Singh Chaudhary Versus Kirpal Singh-2009(1) RCR 531** held that if the landlord was falsely claiming rent at the rate of ₹300/- per month whereas rate of rent was ₹150/- per month. It must be taken that the landlord did not come to court with clean hands and his own version that the tenant had not paid rent must be disbelieved when the tenant had come with categorical statement that he had paid the arrears. I will not say as a proposition of law that if a tenant, who is entitled to obtain a receipt, does not produce a receipt, there must be at all times an inference that the landlord must have received the rent. A tenant cannot put his own

lapse of securing a rent receipt to his advantage, but if this has to be seen in the context of the landlord who came to court with a false case about the rate of rent, the reasoning adopted by our courts would seem eminently to be a just approach and a judicial reprimand and a punishment will have to be administered to a landlord who came to a court with a false case. The courts below failed to note that they were considering the case of a landlord whose case of default as assessed was not on the amount which the landlord was saying but the two courts were accepting the rent as pleaded by the tenant as correct. In such an event, a partial acceptance of the tenant's evidence and a favourable observation for a landlord as regards the non-payment of rent was a wrong judicial approach that led to travesty of justice. The findings of the courts below are clearly perverse as regards both its competence as well as the inferences made on the available evidence.

VII. When landlord's petition for eviction is set aside, the landlord will not be liable for mesne profits

20. There is an application in CM No.1520-CII of 2014 for determination of mesne profits. The issue of determination of mesne profit arises only before the consideration of the revision on merits. Ideally, the application must have been taken up independently but unfortunately at some point of time, the application had been directed to be taken up along with the revision petition by a predecessor Judge. If the Rent Controller's orders were to be upheld

and the order of eviction was also being confirmed, then determination of mesne profit would be most just event, for, the tenant, who had suffered an order of eviction, could not have continued to pay same rent for his continuance in possession. If, in this case, I am holding that the plea of the landlord regarding non-payment of rent was false and when I am setting aside the orders of eviction passed by the two courts below, the liability of a tenant shall only be to pay rent and not for mesne profits. Mesne profits shall always be understood as a financial recompense for unlawful possession. If I hold that the possession of the tenant to be as such tenant, discarding his own plea that such a status ceased to exist, then the amount of what he has paid and what he was later directed to pay during the pendency of appeal would leave no scope for determination of mesne profits.

VIII. Plea for consideration for renegotiation of rent, spurned off by landlord

21. Before parting with the case, I asked the counsel appearing on behalf of the respondent who was being instructed by the party in person in court whether he would bargain for a reasonable rent of what is prevailing in the market. The respondent would have nothing of this and he would rather suffer a judgment which is unpleasant for him than to make a demand for what is just to him. I had even a word from the senior counsel who was arguing for the petitioner that he should be prepared to pay rent at reasonable

rate and the counsel was prepared to accede for such a consideration but it has come to naught for the tough posturing adopted by the landlord. I cannot help the landlord in such a situation any better.

IX. Disposition

22. The tenant succeeds and the orders of eviction passed by the courts below are set aside and the civil revision is allowed with costs assessed at ₹10,000/- against the landlord. The tenant shall continue to pay rent as directed and cannot take any longer a plea that jural relationship does not exist but if there should be any default, it will give rise to a different cause of action which I am not addressing in this proceeding.

**(K.KANNAN)
JUDGE**

30.04.2015
sanjeev