

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

**CR NO.391 OF 2015 (O&M)
DATE OF DECISION : 11th FEBRUARY, 2015**

Ramphal

.... Petitioner

Versus

Smt. Vijay

.... Respondent

CORAM : HON'BLE MR. JUSTICE SURINDER GUPTA

* * * *

Present : Mr. Manvinder Singh Dalal, Advocate for the petitioner.

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SURINDER GUPTA, J. (ORAL)

CM -3094-CII-2015

The application is allowed as prayed for and the documents Annexure P-5 and P-6 are taken on record subject to all just exceptions.

CR NO.391 OF 2015

1. Respondent-landlord Smt. Vijay filed petition under Section 13 of the Haryana Act No.11 of 1973, seeking ejectment of the revision petitioner from the demised premises i.e. shop being part of plot No.21 bearing old MCK No.737/17, (787-788) new MCK No.240/17(40) situated within the municipal limit of Kaithal at Dayanand Colony Old Chandana Gate, Kaithal, on the ground of non-payment of rent and personal bonafide necessity. The above grounds taken in para 4 of the petition read as follows:

“That the respondent is liable to be ejected from the tenanted premises on the following grounds:-

- (i) That the respondent is in arrears of rent and house tax since January 2008 at the enhanced rate as per agreement mentioned above.
- (ii) That the petitioner requires the tenanted premises for her bonafide requirement as her two sons namely Jitender Pal Garg who is B.Tech (Electronics) and other son Mahinder Pal Garg who is Graduate and both are unemployed and wants to start their business and permanently settle at Kaithal because other near relative of the petitioner are already settled at Kaithal. No other vacant shop is owned and possessed by the petitioner within the municipal limits of Kaithal and petitioner has not vacated any shop in the urban area of Kaithal after the commencement of this act of 1949 without sufficient reason. The petitioner wants to settle her sons in the shop of Electronics in the tenanted premises and the requirement is bonafide one.”

2. The revision petitioner, in reply, denied the relationship of landlord and tenant between the parties and alleged that he had taken the demised premises on rent from M/s. Sharda & Company, Bhagat Singh Chowk, Kaithal through its partner/Proprietor Dev Raj in the year 2002.

It was also denied that the demised premises was taken on rent @ ₹1600/- per month excluding house tax. Though there is no mention of the rent note in the petition filed by the respondent copy of which has been filed as Annexure P-1, the revision petitioner alleged that he had not executed the rent note dated 19.05.2000 and terms mentioned therein are not binding on him. No rent was tendered and plea was taken that the rent was being paid regularly to M/s. Sharda and Company. The necessity of the demised premises as projected by the respondent-landlord was also denied.

3. Learned Rent Controller, Kaithal vide order dated 03.07.2013 allowed the eviction petition on the ground of non-payment of Rent. The revision petitioner was held to be tenant under the respondent landlord. While holding the relationship of landlord and tenant between the parties, the reliance was placed on the rent Note dated 19.05.2000 Ex.A-1, the agreement Ex.A-2 and report of handwriting and finger print expert Navdeep Gupta AW-2. The respondent-landlord had moved an application for obtaining the specimen signatures and handwriting of revision petitioner in court but vide his statement recorded on 11.08.2011 the revision petitioner refused to give his specimen handwriting and signatures.

4. The appeal filed by the revision petitioner against order of the Rent Controller was also dismissed by the Appellate Authority, Kaithal.

5. Learned counsel for the revision petitioner has put-forth two fold arguments while assailing the legality and validity of the order/judgment passed by the learned Rent Controller and the Appellate Authority under the Rent Act. He has argued that the tenancy under the rent note dated 09.05.2000 was between Ram Niwas and respondent and not with the revision petitioner and the document has been wrongly relied upon to reach the conclusion of relationship between the parties. He further argues that the ejectment of revision petitioner has been ordered by the Courts below without recording the specific findings that the revision petitioner is in arrear of rent.

6. The rent note Ex.A-1 and agreement Ex.A-2 was purported to have been executed by one Ram Niwas, but these were taken as documents executed by the revision petitioner-Ramphal. While reaching this conclusion the Rent Controller has observed as follows:

“Further, from the hand writing expert report Ex.AW2/1, it transpires that hand writing of Ram Niwas and Ram Phal is same which also shows that Ram Phal intentionally shows himself as Ram Niwas and affixed his signature as Ram Niwas on rent note as Ex.AW1 and agreement Ex.AW2. Further, respondent also denied to give his specimen hand writing and signatures before the court on date 11.8.2011, which also shows that he is playing fraud with petitioner and an adverse

inference shall be drawn by this court against the respondent.”

7. The revision petitioner examined Dev Raj under whom he claims his tenancy, who did not support his case. The Appellate Authority on perusal of the submission of the witness Ram Niwas DW-1 and Dev Raj DW-2 reached the conclusion as follows:

“Ram Niwas deposed that he had taken the shop in dispute from Dev Raj and he had identified his signatures on rent note Ex.A2. But he categorically deposed that he had taken the shop in June 2006 and rent note Ex.A2 pertains to the year 2000 so it means that rent note in dispute is neither executed with (sic. by) Ram Niwas as per testimony of Ram Niwas as he had executed the rent note in the year 2006 and he had left the shop after one and half year. Even in his cross-examination he deposed that he had shifted in another shop which was purchased by him and he is working in that shop from the year 1998 to 2012. When he had one shop then what was the need of another shop to him as he neither deposed that which kind of business he had operated in the disputed shop. He further admitted in his cross-examination that Ram Phal is residing in his

village and he is doing the work of general store since 10 years. It means from the very beginning appellant Ramphal is operating the business of general store in the disputed premises. He (DW1) further admitted that he had shifted the business in another shop and he retained the shop in dispute from 3-4 months and thereafter appellant-Ramphal had entered into the shop. There are variations in the statement of this witness as earlier he is saying that he had shift from the shop in dispute after one and half year later on he deposed that he left the shop after two-three months, so this witness is simply trying to help the appellant-Ramphal as they belong to the same village as admitted by DW1 Ram Niwas in his cross-examination. Even the testimony of DW1 Ram Niwas reflects that this Ramphal is tenant in the demised premises and DW1 Ram Niwas had never taken the shop on rent as Navdeep Gupta AW2 is categorically supporting the landlady Smt. Vijay who compared the signatures of appellant Ramphal and found that there is similarity in the handwriting. More so, when DW2 Dev Raj appeared he categorically deposed that he had neither dictated the rent note

Ex.A1 and Ex.A2 and he did not know who is Ram Niwas. Of course, he denied in his cross-examination taking the rent from appellant Ramphal.”

8. It is emphasized by learned counsel for the appellant that shop in dispute was taken on rent from Dev Raj. However, this argument is without basis. The title of Smt. Vijay over the suit property is not disputed. There is no evidence on record to show that the shop was let out to revision petitioner by Dev Raj. Regarding the rent note Ex.A-1 it was projected that the same was executed by Ram Niwas in favour of respondent-landlord. Ram Niwas while appearing as witness stated that he took the shop on rent from Dev Raj. The respondent-landlord by leading cogent and convincing evidence has been able to prove that the rent note Ex.A-1 was executed by revision petitioner but in a very clever manner it was shown to have been executed by one Ram Niwas. The inference was also to be drawn against him as he had refused to give his specimen signatures when called upon.

9. Despite all types of plea raised, the revision petitioner has nowhere disputed that he is a tenant in the demised premises i.e. shop no.737/17 old and 240/17(40) New, Dayanand Colony, Old Chandana Gate, Kaithal. The title of respondent-landlord over this property is also not disputed. Mere assertion of appellant that he was let out the shop by M/s. Sharda & Company, Bhagat Singh Chowk, Kaithal through its partner Dev Raj, find no support or corroboration from the evidence on

record. Even if the rent note Ex.A-1 and agreement Ex.A-2 are ignored, still the revision petitioner could not contest or deny the title of the respondent-landlord and the relationship of landlord and tenant between the parties. It was specific case of the appellant that he had never paid rent to the appellant. He claimed to have paid the rent to M/s. Sharda & Company but no documentary evidence, whatsoever, was produced to prove this fact. Dev Raj, under whom he claimed the tenant of the disputed shop, was examined as RW-2 but he had also not supported the case of the revision petitioner.

10. The rent note Ex.A-1 and agreement Ex.A-2 were purportedly executed by one Ram Niwas S/o Rati Ram. The respondent while appearing as AW-1 had stated that she had family relations with Dev Raj and the shop was given to the revision petitioner, who was known to Dev Raj. He disclosed his name as Ram Niwas. Relying on the report of handwriting expert, learned Rent Controller reached the conclusion regarding the execution of the rent note by revision petitioner.

11. Here a question arises as to why the respondent-landlords will come up with a false version and place reliance on the rent note Ex.A-1 and agreement Ex.A-2 to prove the tenancy of the revision petitioner. The rent Controller in para 13 of the order has observed that Ram Niwas s/o Rati Ram who appeared as AW-1 had been running a grossery shop since 1998 till 2012 and thereafter he started business of cloth merchant in Krishna Market, in a shop which he had purchased. That shop is adjoining the demised shop i.e. tenanted premises. Under

these circumstances it was found improbable that Ram Niwas who owned his own shop and was running grossery business, would take the demised shop on rent and execute the rent note Ex.A-1 and agreement Ex.A-2. Ram Niwas was not even aware of the year when the demised premises was taken by him on rent, as he disclosed the year of his taking the shop on rent as June, 2006 while the rent note Ex.A-1 is dated 19.05.2000. It is nowhere the case of respondent that he had taken the shop from Ram Niwas as his sub-tenant or the business in the shop is being run by Ram Niwas through him. He claims himself to be a direct tenant under the landlord.

12. In the absence of any plea or evidence that Smt. Vijay is not owner of the demised premises, both the Courts have committed no error or law and fact while reaching a conclusion that there exist relationship of landlord and tenant between the parties.

13. This argument of learned counsel for the revision petitioner that no specific finding regarding the arrears of rent was recorded by the Courts below, has also no merits. The respondent-landlord claimed arrears of rent from January 2008 along with house tax. The respondent claimed that he had paid the rent to M/s. Sharda & Company but failed to prove the relationship of landlord and tenant with M/s. Sharda & Company and did not tender the rent as claimed by the respondent-landlord. Apparently in the absence of any proof of payment of rent produced by the revision petitioner, he has been rightly ordered to be

ejected on the ground of non-payment of rent as claimed by the respondent-landlord.

14. On perusal of the order passed by the learned Rent Controller and judgment of the appellate Court, I find no legal or factual infirmity therein calling for any interference. This revision petition has no merits and is accordingly dismissed in limine.

11th February, 2015
'raj'

(SURINDER GUPTA)
JUDGE