IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No.431 of 2015
Date of Decision: 19.01.2015

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M/s Churia Ram Ramesh Kumar and another

. . . .Petitioners

Versus

Shri Subhash Aggarwal (deceased) through his LRs

. . . . Respondent

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CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

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Present: Mr.Pankaj Jain, Advocate,
for the petitioners.

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RAKESH KUMAR JAIN, J. (ORAL)

This petition is by the defendants, who have sought permission of the Court to amend the written statement at the stage of their evidence.

In short, the landlord filed petition for seeking eviction of the tenants/petitioners, *inter alia,* on the ground of non-payment of arrears of rent as well. The petitioners denied the relationship of landlord and tenant alleging that their landlord was Mange Ram Aggarwal, who had executed a Will in favour of his wife Pushpa Devi, therefore, the present respondents are not their landlord. The Rent Controller did not assess the provisional rent because the petitioners had denied their relationship of landlord and tenant with Subhash Aggarwal.

Learned counsel for the petitioners has submitted that though they had not denied to pay the rent but at the same time,

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the Rent Controller did not assess the provisional rent on the ground that the petitioners had denied their relationship with Subhash Aggarwal as landlord and tenant. During the pendency of the petition, Subhash Aggarwal, unfortunately, died on 18.7.2014 and vide order dated 13.8.2014 his mother Pushpa Devi, his wife, minor son and minor daughter were impleaded as his legal representatives. Then, an application was filed by the petitioners on 4.4.2012 for assessment of provisional rent on the ground that since Pushpa Devi, mother of Subhash Aggarwal, is impleaded as his LR, whom they have admitted to be the landlord of the property in dispute, therefore, they may be allowed to pay the provisional rent to her, if it is so assessed by the Court. However, the said application was dismissed on 24.12.2014 on the ground that Pushpa Devi is not the landlord rather she has stepped into the shoes of the landlord, only pursuing the case of the deceased landlord and is not the landlord in her individual capacity. The said order remained unchallenged. The petitioners moved an application under Order 6 Rule 17 of the CPC to amend the plaint in order to add the following paragraph:-

> *"That after the death of petitioner Subhash Aggarwal and Smt. Pushpa Devi, being brought on the record as a legal heirs the respondent admits Smt. Pushpa Devi, as the owner-cum-landlord and ready to pay the rent in accordance with law and admits relationship of landlord and tenant between the respondent and Smt. Pushpa Devi".*

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The said application has been dismissed by the impugned order, *inter alia,* on the ground that the earlier application filed by the petitioners on 4.4.2012, in which they had made a prayer that provisional rent be assessed and they may be allowed to pay the rent to Pushpa Devi, who has now stepped into the shoes of Subhash Aggarwal as landlord, was also dismissed.

Learned counsel for the petitioners has argued that it does not shut out their case for all times to come as the tenant cannot be estopped from denying the title of the landlord if it comes to an end subsequent to the creation of the tenancy. In this regard, he has relied upon a judgment of the Supreme Court passed in ***"J.L. Lal Pvt. Ltd.*** *Vs.* ***M.R. Murali"*** *2002(1) RCR (Rent) 263.*

I have heard learned counsel for the petitioners and after examining the record, am of the considered opinion that there is no merit in the present revision petition. The landlord had filed the petition seeking eviction of the petitioners/tenants, *inter alia,* on the ground of non-payment of arrears of rent. Although the petitioners had averred in their written statement that they are ready and willing to pay the rent yet the learned Rent Controller declined their prayer by passing a specific order that since the tenants had denied their relationship with Subhash Aggarwal as landlord and tenant, therefore, as per settled law, the provisional rent cannot be assessed. Since, the original landlord Subhash Aggarwal had died, his LRs were brought on record and an application was filed by the petitioners, admitting the mother of Subhash Aggarwal as landlord, to make the payment of arrears of rent to her, provided that the provisional rent is assessed by the Rent Controller. However, the

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said application was dismissed by order dated 25.11.2014 which was not challenged and is still operative.

Be that as it may, in order to circumvent the order dated 25.11.2014, the petitioners have now filed an application to amend the written statement admitting Pushpa Devi as landlord and alleged that they are ready and willing to pay the rent to her in accordance with law.

It is needless to mention that Pushpa Devi alone is not the owner-cum-landlord of the property in dispute as she has stepped into the shoes of Subhash Aggarwal along with his wife and two minor children. The averment made by the petitioners lacks *bona fide*. Moreover, once, the Rent Controller has passed the order dated 25.11.2014 making a categoric observation that Pushpa Devi has not entered into arena of this *lis* in her individual capacity but as a legal representative of Subhash Aggarwal, the application moved by the petitioners at the stage when they are leading their evidence, to amend the written statement to the effect that Pushpa Devi is owner-cum-landlord, is totally after-thought and cannot be allowed.

Accordingly, I do not find any merit in the present revision petition and the same is hereby dismissed.

(RAKESH KUMAR JAIN)
JUDGE

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