

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.4374 of 2015 (O&M)

Date of Decision.21.07.2015

Jai Bhagwan

.....Petitioner

Versus

Krishan Abbey

.....Respondent

Present: Mr. P.K. Kukreja, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of 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?

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K. KANNAN J. (ORAL)

1. The revision petition is against the order of eviction directed against the tenant under the East Punjab Urban Rent Restriction Act, 1949 brought at the instance of the landlord on the ground that the tenant has ceased to occupy the property from August 2003 till date when the petition was filed on 16.11.2007. The petition was resisted by the tenant on the ground that the landlord had come with the similar application on an earlier occasion through a rent petition and he has suppressed the said fact and filed the present petition. The Rent Controller, therefore, addressed the issue of whether there had been a proper conduct on the part of the landlord and whether he had come to Court with clean hands. He found that there had been a deliberate suppression and the landlord not having come to Court with clean hands, was not entitled to the relief which he sought. He also found that the landlord had not proved that the property had ceased to be in the

possession of the tenant and dismissed the petition. The landlord preferred an appeal to the Additional District Judge who reversed the decision and granted the relief of eviction. The issue of whether the earlier proceeding relating to eviction on the same ground operated as res judicata was also addressed by the Judge to hold that it related to different period and the petition for eviction was filed on continuance of cessation to occupy from a period from 1.8.2003 and constituted a different cause of action. The Appellate Court made an issue of the fact that the property did not have even electricity connection and he could not have continued in possession of residential house without any electricity service. It further took note of the fact that the tenant had obtained government accommodation being a government servant and having shifted the property, he had ceased to occupy the premises.

2. The tenant who is ordered to be evicted is before the Revision Court to contend that the Appellate Court failed to address an important issue regarding the conduct of the landlord for not having to come to Court with clean hands as found by the trial Court and there was no finding as regards the same. The counsel would also argue that the previous petition seeking for eviction on the same ground had failed and such decision will constitute res judicata against the landlord from seeking eviction. The counsel would also argue that there are several authorities to the effect that non-payment of electricity charges or disconnection of electricity cannot prove that the property has ceased to occupy by a tenant.

3. It is also urged by the tenant that the Appellate Court had found that the tenant had ceased to occupy the premise from August,

2007 and if the petition was admittedly filed only on 17.11.2007, there was not even a four months time as required in the statute for ordering from the date when a tenant had ceased to occupy and therefore, eviction could not have been ordered. The tenant would make reference to the fact that the landlord had previously complained to the superior officers of the tenant to say that he had actually taken government accommodation and let out the same to some other third party while denying the possession of the tenanted premises. According to the tenant, if that were to be the contention of the landlord, it is inconceivable as to how the landlord could contend that the tenant had ceased to occupy the premises.

4. I would find the reasoning of the Appellate Court while ordering eviction to be comprehensive. None of the grounds urged before me by the counsel has any merit. I must point out in the first place that earlier action for eviction filed against the tenant was on the ground that after obtaining an allotment from the Government on 01.08.1998, he had shifted himself to other building and he had sublet the premises to his son. The Court was raising two issues of whether he had ceased to occupy the premises by the fact that he had shifted himself to the government accommodation and whether there had been a subletting of the premises. The Rent Controller in the previous action directed eviction but the Appellate Court through a judgment delivered on 12.04.2007 observed that occupation of a member of the family ought not to have been taken as subletting and having found that since possession must be treated as a possession of the landlord himself found that there was no ground made even for cessation to occupy the

premises. This was in relation to a petition which was filed on 8.2.1999. The ground of cessation to occupy could, therefore, have a bearing only to cessation that were taken place four months prior to 8.2.1999. The other ground of subletting is not even a ground which is urged in the present petition. The disposal of the earlier petition can have no bearing to present petition which is filed on an express statement that the property which was in the possession of a tenant has also been locked by his son and the property is unoccupied. The eviction is, therefore, sought for a cessation to occupy that had commenced according to the landlord on 01.08.2003 till the date when the petition was filed on 16.11.2007 . I would, therefore, find that the subsequent petition was surely on different cause of action and any decision rendered in the earlier petition cannot have a bearing to the present dispensation.

5. As regards the contention of the tenant that he had large family and he had only allowed the other family members to stay in the rented accommodation in spite of the fact that he had been allotted government accommodation and that he had not ceased to occupy the premises, it should be considered from a context of what had happened subsequent to 01.08.2003. If his contention were to be that by virtue of allotment of government accommodation, he had shifted himself to the government property as the rules would require and he had only allowed other members of the family to be in possession of the tenanted premises, I will take the presumption about the fact that occupation by a son must be taken as his own occupation to govern the issue and I will not reopen the same but the point would still require to be seen is a specific contention raised by the landlord in the present petition that the

property which was in the possession of the son also fell vacant and there has been no occupation of the premises subsequent to the period from 01.08.2003. If the landlord had stated that the tenant had taken government accommodation and let it out to some person that he was continuing in the tenanted premises, it should be understood by sifting entire volume of evidence that was brought before the Rent Controller. If the tenant were to contend that after the allotment of government accommodation, he actually shifted to the government accommodation and he had only allowed the other members of the family to remain in the demised premise, it would have no bearing at all. There was a complaint by the landlord that he had rented out the government accommodation. It was not the contention of the tenant that he had rented out the government accommodation. His plea at all times was that he continued in possession of the government accommodation and he had only allowed some of the members of his family to continue in the demised premise. On a conspectus of the whole of evidence that was brought before the Rent Controller, it was only seen that if the premises had fallen vacant subsequent to August, 2003, the landlord was trying to rely on the most important and natural evidence that was possible for a person to show the continuance in possession. A residential house in urban property, it is inconceivable, is continued for years from the year 2003 under candle lamps or hurricane lamps. The whole life style all over India has changed and even the Electricity Act of 2003 recognizes the electricity to be not a luxury any more and it is considered as a necessity. Section 43 of the Electricity Act, therefore, makes an important departure that it is not even necessary for a person who is in

possession of property to show his ownership before he obtains electricity connection. The Court will take judicial notice of the fact that electricity being such an important amenity is seen as a sure method of determining whether the person had put the use of the property or not. It may not be at all times conclusive but it has to be tested with all other evidence that is possible. There are other explanations given by the tenant as to how the property was used. It is not a proposition of law that without electricity a property cannot be enjoyed or if there is an electricity connection, the property must always be taken to be enjoyed. It will be considered along with other evidence. In this case, if the landlord was trying to rely on the fact of government allotment to the tenant and continuance of possession was in the hands of the son, he attempted to show that it was a case of subletting and he failed to establish the same. The cessation to occupy by the son himself would surely be a ground by person to say that the property had been ceased to be occupied. In such an event, the fact that the electricity connection on a minimum consumption pattern was surely an important evidence and that has been considered by the Court below to say that the tenant had ceased to occupy the premise.

6. I directed a straight question to the counsel to explain as to how there was only minimum electricity consumption charges to the property which was being used for residential purpose. The counsel would beat around the bush and would travel along the hedges that there was no water connection. I asked about the electricity connection and all that he could respond was that there was no water connection the tenant was put to suffering and he was staying at the first floor and the

water connection was disconnected at the ground floor. If the Appellate Court has found that cessation to occupy had been clearly established an appropriate and adequate materials, I would not find that it requires any interference in revision.

7. The plea by the tenant that the landlord at some point of time complained to the government that he had rented out the premise would not require any separate discussion, for, I have already dealt with it above.

8. I find no merit in the revision petition. On the other hand, I find this attempt itself to be grossly mala fide. It is about a government servant who wants to hang over the property only with the view to collect ransom from the landlord if it is possible. The revision petition is dismissed.

(K. KANNAN)
JUDGE

July 21, 2015
Pankaj*