

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

CR No. 2440 of 2002 (O&M)
Date of decision: July 22, 2015

Raghubir Chand Mahajan

...Petitioner

Versus

Indian Bank

...Respondent

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

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

Present: Mr. Atul Gaur, Advocate, for
Mr. Sumeet Goel, Advocate,
for the petitioner.

Mr. Alok Jagga, Advocate with
Mr. Karanyog Singh Riar, Advocate,
for the respondent.

K. KANNAN, J. (Oral)

I Facts in brief

1. The revision petition is against the concurrent orders of eviction passed against the tenant. Originally tenancy was in favour of one Kartar Devi and another Inder Chand Kalra. The property was claimed by the bank as a assignee through a compromise decree brought between the bank and the Landlord through a decree dated 17.9.1984. The compromise in favour of the bank purported to transfer the right of 6/10th share of the landlord and 4/10th share as a mortgagee through memorandum dated 23.7.1985. The tenant was not a party to the compromise. The tenant was informed through a notice issued on 26.11.1991 received on 4.12.1991 by

the tenant that the rent shall be paid to the Bank.

2. The landlord filed a petition for eviction stating that the tenant had not paid rent inspite of notice and that he was in default from 7.9.1984. The tenant took up a plea that the original landlord's daughter Veena Devi claimed herself to be the landlord and was collecting rent. Originally, the tenant filed a written statement contending that the rent was Rs. 90/- as being paid to Veena Devi but later filed an application for amendment to the written statement and contended that the rent was Rs. 60/- per month.

3. The Rent Controller found that the case of tenancy must be taken as established by virtue of the fact that the original landlords Kartar Devi, Inder Singh had been parties to a compromise, in terms of which they transferred the right to the bank and therefore, the bank was competent to treat itself as the landlord and demand rent. Adverting to the quantum of rent, the Rent Controller drew an adverse inference against the tenant in not examining Veena Devi or filing the document of lease purported to contain a reference to the rent as Rs. 60/- and held that the tenant had been paying rent only from 1.1.1992 @ Rs. 60/- and there had been a short payment of rent which is malafide. The eviction order was issued which was confirmed in the appeal by the appellate court. The decisions of both the courts make a further reference to the fact that the tenant had filed inter-pleader suit making the bank and Veena Devi as defendants to adjudge on who the owner was and under whom the plaintiff was required to attorn the tenancy. The appellate authority observed that even the inter-pleader suit has been dismissed and there was no bonafides in the tenant in not paying the rent to the bank and found eviction as an inevitable consequence.

II Contention of tenant in revision

4. The learned counsel appearing on behalf of the petitioner states that after the dismissal of inter-pleader suit, they preferred an appeal and the appellate authority set aside the order of the trial court and remanded the matter by judgment dated 24.2.1997. He states that he has no instruction about the fate of the suit after remand. He would contend that he is willing to accept the rent payable as Rs. 90/- and that in terms of the judgment of the supreme Court in Rakesh Wadhawan V. Jagdamba Industrial Corporation, 2002 2) PLR 370, the rent determined by the court ought to be permitted to be paid through a direction and if only the direction is not complied with, the order of eviction could be issued. He would therefore, seek for an appropriate direction from the court for determination of the amount that is payable.

III Contention on behalf of the landlord

5. The learned counsel appearing on behalf of the respondent has very serious objection to the offer and would contend that there was simply no bonafides on the part of the tenant to deny the title when his landlords, namely, Kartar Devi and Inder Singh were party to the compromise and there was no case for him that he was continuing to pay the rent from 17.9.1984 to the said two persons. Even after the notice issued by the bank, the tenant was not paying the rent as directed and he took a false plea that the rent payable was only Rs. 60/- and that too only to Veena Devi. Veena Devi had filed a suit for eviction against the bank itself claiming that she was the owner and though it was decreed by the court at the first instance, it was set aside in appeal recognizing the bank's right to the property on its own behalf. The counsel would argue and cite before me four decisions of this court (in Hukma Devi Versus Bhagwan Dass 2003 (2) PLR 371,

Jagdamba Tea Factory and others Versus Parshotam Kishan 2008 (3) R.C.R. (Civil) 17, Yashpal Singla Versus Vijay Kumar 2004 (3) PLR 504 and Mrs. Preeti Versus Manmohan Singh and another 2008 (2) R.C.R.(Civil) 185) to state the proposition that where the tenant denies the title of the landlord there is no requirement of law to determine the rent in the manner provided in Rakesh Wadhawan's case (supra) and the denial of title accompanied by non-payment of rent would themselves offer a good ground for eviction. The counsel would argue, therefore, that the tenant who had denied the landlord's status, as such, and would also pick up a false plea that the rent payable was only Rs. 60/- cannot have the benefit on retention of possession. The counsel would read to me the observations of the court below characterizing the conduct of the tenant as not bonafide in not tendering even the amount that was originally admitted in the written statement as Rs. 90/-. He was deliberately taking a false plea that the rent was Rs. 60/- and such a tenant will not have the benefit of an opportunity of being paid the rent if at all there was a scope for re-assessing the rent before this court.

IV Manner of how principle of attornment of tenancy will operate.

6. While understanding the whole controversy, it must be remembered that the bank was not the original landlord of the tenant. The bank was claiming right to the property as transferee through a compromise decree. It is perhaps a moot point whether a compromise decree could transfer right in the immovable property without registration, but this is not a case for declaration of title and I, therefore, refrain from commenting about the validity of a claim by the bank that it obtained ownership of the property. A landlord's status does not require proof of ownership but

merely a jural relationship that may exist between the two persons, one claiming as landlord and another as tenant. If this is a case of assignment, even if invalid, if the tenant attorns the tenancy to the assignee that will create the relationship. However, attornment is also required to be conform to the requirement of law and the source of such consideration would obtain through the principle contained under Section 109 of the Transfer of Property Act (hereinafter referred to as '**the Act**'). It enacts a rule of attornment of tenancy and reads as under:-

“109. Rights of lessor's transferee.—If the lessor transfers the property leased or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not, by reason only of such transfer cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him.

Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.

The lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they disagree, such determination may be made by any Court having

jurisdiction to entertain a suit for the possession of the property leased.”

This provision makes possible for a transferee, in the absence of a contract to the contrary to possess all the rights and if the lessee so elects be subject to the liability of the lessor to the property transferred. The proviso is important that a transferee shall not be entitled to arrears of rent due before the transfer and that if lessee not having reason to believe that such transfer has been made pays rent to the lessor, the lessee would not be liable to pay over again to the transferee. We have seen here that notice has been issued and received by the tenant only on 4.10.1991 about the transfer on compromise and demand of the bank to attorn the tenancy to the bank. If the tenant had contended that he had been paying rent to Veena Devi, the duty to recognize Veena Devi as landlord can cease and the assignee can obtain a right to demand rent from the date subsequent to the notice, if the tenant chooses to attorn. The attornment itself takes place by two means, one by operation of law and by conduct of party. In a typical situation of death of a landlord when the property survives to the legal representatives, the attornment to the respective legal representatives shall be taken as by operation of law. If, on the other hand, a transfer is made by the original landlord and transferee seeks for recognizing himself as landlord and the the transferor also consents to such attornment, the tenant is bound to recognize the transferee. However, in a situation where the transferee makes a demand and the original landlord does not consent to the same, there can be truly an issue of bonafide dispute which a tenant may not be able to confront. He may direct either of the landlords to seek for an adjudication for the respective rights or may himself resort to an interpleader suit to secure an

adjudication about who the landlord is . In this case, we must notice that the original landlord Kartar Devi and Inder Singh have both died. Their daughter Veena Devi continued to exercise the rights of ownership and claim her status as a landlord. The counsel for the respondent points out that Veena Devi herself was a party to the compromise and her conduct in treating the tenant as her tenant was not proper. The daughter's conduct is wholly irrelevant. After all, the tenant was not a party to the decree. He has a right to insist that the landlord or a person claiming as a transferee settles their own differences. I will not, therefore, make much of issue that Veena Devi was a party to the compromise.

V In case of denial of title by tenants, the bonafides of denial is a triable issue.

7. Admitted facts show that the tenant could have been forced into a state of prevarication. Veena Devi had filed a suit for eviction against the bank treating herself to be the landlord and refusing to recognize the right under the compromise with the bank. The petition for eviction had been ordered and only the first appellate court reversed the same. All that tenant could have wished was continuance of possession and if at the time when Veena Devi filed a petition for eviction against the bank, the tenant was continuing to pay the rent to Veena Devi, it was obvious that he was doing so to protect himself from being evicted. It has turned out that Veena Devi could not hold her own and the bank was able to assert its right as a landlord. At the time of trial things had not clearly solidified and it was surely in a state of flux. The tenant's contention that he was liable to pay the rent only to Veena Devi and that he was not prepared to recognize the bank as his landlord cannot be taken as lacking in bonafides or a vexatious defence. I cannot qualify the defence as wrought out of any

contumaciousness. If the tenant was paying 60 rupees to Veena Devi first and started paying the rent to the bank at the same rate, which he believed was the amount payable from the succeeding month after receipt of notice, namely from 1.1.1992, I would not find that there was any default in payment of rent. If the court was deciding the rent not 60 but 90, all that it could have done to call upon the tenant to pay the difference of rate fixed by it. That is the dispensation in Rakesh Wadhawan's case (supra).

VI In rent control proceedings, denial of title will not automatically forfeit tenancy, if there is no such provision in the State legislation; determination of bonafides of defence is still relevant.

8. The learned counsel appearing on behalf of the respondent has relied on decisions which I have already been referred to above, where our courts have held that it is unnecessary to decide on the rent payable and give an opportunity to tenant, if the tenant was denying the title of the landlord. In this case, if it is merely a case of tenant who having taken the property from the landlord was denying the tenancy, it could be stated that such a denial was not bonafide and it would attract the principle of forfeiture as enunciated under Section 111 of the Act and would be estopped by taking such contention by virtue of Section 117 of the Evidence Act. Neither of these provisions would apply in a situation where the denial could be stated to be even bonafide. The Supreme Court was actually holding that forfeiture will not entail in situation where Rent Control Act would intervene. The Supreme court in Shella Vs. Firm Prahlad Rai Prem Parkash 2002 (3) SCC 375, making a reference to its own earlier judgment rendered in Raja Mohammad Amir Ahmad Khan V. Municipal Board of Sitapur was holding “the principle of determination of tenancy by forfeiture consequent upon denial of lessor's title may not be applicable where rent control legislation

intervenes and such legislation while extending protection to tenants from eviction, does not recognize such denial or disclaimer as a ground for termination of tenancy and eviction of tenant”. The Supreme Court judgment which this court was relying on was actually dealing with the case of Madhya Pradesh Accommodation Control Act, 1961. There are several State Rent Control legislation which recognize denial of title as a ground of eviction. The Punjab Rent Restriction Act does not make it a ground. That in my view will make all the difference. The court which considers whether a direction of deposit should be made would still be required to find whether the denial is bonafide or not. The four decisions of this court, referred to above, ought to contain a qualification which it did not have an occasion to consider that a Rent Controller would still be required to give an opportunity on the basis of the decision in Rakesh Wadhawan's case (supra) in a situation where the denial of title is bonafide.

9. The four decisions were confronting the situation where tenant was found to be unjustified in denying the title. In some of the cases, the tenant was setting up title in themselves. In such situations, it is obvious that there would be no purpose served by determining a rent and directing the amount to be paid. A person who sets up title himself, says that he is not liable to pay any rent, the issue of determination of rent simply does not arise in such a situation. On the contrary, if a tenant says that a particular rent is payable but it is not the amount which the landlord claims and that too rent is paid to a person other than the person who is applying the court, the Rent Controller has two duties: One, he is required to find that there existed jural relationship of landlord and tenant. If he finds that no such relationship exist, the petition must be dismissed summarily. If he finds that

such relationship exists he shall proceed to follow the second duty, namely, the quantum of rent payable. If the quantum is determined then in terms of decision in Rakesh Wadhawan's case (supra), he is bound to calculate the amount and direct the amounts to be paid on the next date of hearing. The Court cannot characterize the defence questioning the quantum as malafide and direct eviction. The issue of malafides is irrelevant, while the court determines the quantum of rent. The conduct will be seen only if there is a failure to comply with the directions, even after letting the order become final.

VII Fact situation: Denial of title bonafide; tenant ought to be given an opportunity to deposit rent.

10. In this case, I have already observed that the tenant's conduct in denying the relationship of landlord and tenant between the bank and himself cannot be said to be malafide. When the court found that the bank alone was the landlord and it proceeded to the next stage of determining the rent payable as Rs. 90 and all that it could have done was to offer an opportunity to the tenant to make the payment. It had no judicial function to indulge in characterizing the tenant was taking wrong plea of quantum of rent. Even his own conduct in filing a interpleader suit must be taken as giving rise to inference of a bonafide dispute and the dismissal of the suit ought not to be taken as immediately applying a logic that he forfeited the tenancy. The two courts below were, therefore, in error in holding that the tenant made short deposit of rent in paying rent only at 60 rupees. If the rent was Rs. 90/-, all that was required to be done was directing the tenant to make the payment within the date which it stipulated.

VIII Dispensation

This, therefore, shall be the dispensation:

The rent determined is Rs. 90/- and the finding is not disturbed.

The difference of Rs. 30 shall be paid from 1.1.1992 till date if it has not already done. The payment shall be done within a period of four weeks from the date of receipt of a copy of the order. If the tender is made in any legal form, the orders of eviction already passed are set aside and the revision is allowed. If the amount is not paid as directed, the orders of eviction passed shall stand restored and the bank will be competent to put the decree in execution.

Before parting, I am also to record a plea made by the counsel on behalf of the bank that since the bank is a public authority within the definition of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, the right of the bank to take independent action under the said Act must be protected. The application made will govern the rights of the parties only for the action taken under the Punjab Rent Restriction Act and if the landlord has any other legal option available for securing eviction under any other Act, including the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, it shall be perfectly competent for the bank to resort to such action.

July 22, 2015
prem

(K.KANNAN)
JUDGE