

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. CR-4831-2014 (O&M)

Ashok Kumar

..... Petitioner

Versus

Anita Sharma

..... Respondent

2. CR-4832-2014 (O&M)

Randhir Singh

..... Petitioner

Versus

Anita Sharma

..... Respondent

Date of decision: 4.2.2015

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the 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?*

PRESENT: Mr. Vijay Lath, Advocate for the petitioner (in both cases).

R.P. NAGRATH, J. (ORAL)

By this common order, CR-4831-2014 and CR-4832-2014 are being disposed of as both these revisions have been filed under Section 15(5) of the East Punjab Urban Rent Restriction Act, 1949 (for short 'the Act') and are arising out of the similar facts between the parties.

For brevity, the facts are being extracted from CR-4831-2014.

2. CR-4831-2014 is filed against the order dated 27.1.2011 passed by the learned Rent Controller, Ludhaina, affirmed in appeal vide order dated 15.10.2013 passed by the learned Appellate Authority, vide which the petitioner was ordered to be evicted from the demised premises. The petitioner denied the existence of relationship of landlord and tenant between the parties but it was admitted that the petitioner is occupying the demised premises as tenant in categorical terms. It was stated that the rate of rent of the shop in question in occupation of the petitioner was ₹ 100/- per month and the rent stood paid to the owner/landlord up to 31.12.1998.

3. Respondent-landlady alleged that rate of rent of the premises was ₹ 500/- per month. I am, however, of the view that issue of rate of rent shall not be quite significant in the instant revision as the tenant has not tendered the rent on the first date of hearing. In view of the denial of relationship of landlord and tenant, it being the settled principle of law that the learned Rent Controller, was not even obliged to make provisional assessment of the rent or to afford opportunity to tender the rent, at the time of final disposal.

4. I have heard learned counsel for the petitioner and carefully perused the orders passed by the authorities below and the paper-book.

5. Learned counsel for the petitioner has challenged the findings of the Courts below *inter alia* on the ground that (i) respondent-landlady has not herself appeared in the witness box; (ii) that there is no evidence of the month and year of creation of tenancy between the parties and whether it was oral tenancy under a written documents/agreement.

6. I am of the considered opinion that in view of categorical admissions made by the petitioner, both the above contentions raised by learned counsel for the petitioner cannot be sustained.

7. The challenge by the petitioner was mainly with regard to ownership of the property in question to have not been proved by the respondent-landlady. It is further contended that mere proof of ownership would not be enough for establishing the relationship of landlord and tenant between the parties. The term 'landlord' as defined in Section 2 (c) of the Act reads as under:-

(c) “landlord” means any person for the time being entitled to receive rent in respect of any building or rented land whether on his own account or on behalf or for the benefit, of any other person, or as a trustee, guardian, receiver, executor or administrator for any other person, and includes a tenant who sublets any building or rented land in the manner hereinafter authorized, and, every person from time to time deriving title under a landlord;”

8. The plain reading of the definition of term 'landlord' would suggest that the owner of the property is always a landlord though the landlord may not always an owner. This is the well settled principle of law.

9. Delhi High Court in **Renu Jolly Vs. Vinod Kumar, (2002)** ***ILR 2 Delhi 67***, similarly observed that a landlord may or may not be

owner but the converse is not true in as much as the owner is always a landlord in view of the definition of the term. It was further observed that the landlord is a person who by virtue of some authority or powers is entitled to collect rent on behalf of owner whereas the owner by virtue of ownership itself is entitled to receive rent from the tenants in occupation of his property. Same view has been expressed by this Court in **Romesh Kumar @ Mesha Vs. Rama Kumari @ Rama Kundra, 2010 (3) RCR (Civil) 559.**

10. Respondent is indisputably the owner of property since the said controversy stands resolved by the Civil Court. There was a dispute of ownership between the Municipal Council, Payal and the predecessor of the respondent. A suit was filed with regard to ownership which was decreed in favour of Sita Devi by the Civil Judge (Junior Division), Khanna on 4.12.2003. The Municipal Council, filed an appeal against the said judgment and decree which was dismissed. RSA-2898-2006, filed before this Court was also dismissed on 9.1.2007.

11. Learned counsel for the petitioner also referred to a controversy with regard to the identity of property which was statedly inherited by respondent-landlady. It has appeared on record that one Pt. Bilasa was owner of the property and he was survived by Chhajju Ram, his son and estate of Chhajju Ram in turn devolved upon his son Hamir Chand. Salig Ram and Daulat Ram sons of Hamir Chand inherited his estate and became owners of the entire property. Daulat Ram died issueless as appeared in the record of learned Rent Controller. Dharam Pal was the son of Salig Ram who succeeded the estate of Salig Ram.

Sita Devi-landlady is the wife of Dharam Pal aforesaid. The present respondent-Anita Sharma is the daughter of Sita Devi. In this way, the petitioner-tenant could not possibly challenge the title of landlady over the property in question. If the ownership of respondent over the property in question is proved, the petitioner could not deny the existence of relationship of landlord and tenant between him and the owner. It was not stated by the petitioner in his pleadings or during the course of evidence as to who else was landlord of the premises and to whom the rent was paid up to 31st December, 1998, despite admitting his own status as a tenant.

12. Even in the house tax assessment record name of Sita Devi is recorded as owner and that of petitioner as tenant. Learned counsel for the petitioner submits that entry in the house tax assessment register is not sufficient to prove tenancy but there is ample evidence in the shape of admission of petitioner about his occupying the premises as a tenant. This is not disputed that the petitioner even filed an application under Section 12 of the Act making prayer for necessary repairs in the premises and that petition was filed against the respondent-landlady, that too during the pendency of present eviction application. The learned Rent Controller, referred to the admission made by the petitioner with the following observations:-

“..... Even respondent Ashok Kumar in his cross examination admitted his signature on the application dated 17.7.2004 filed by him against Sita Devi which is Ex. P-14. He admitted that he has filed that

application against Sita Devi because he wanted her to get the shop in dispute repaired and has further admitted that rate of rent was settled between petitioner and him as ₹ 50/- per month and even admitted that he has filed a petition for repair of the shop in dispute against Sita Devi U/S 12 of Rent Act and that petition is still pending. So, by his admission he has admitted the relationship of landlord and tenant between the parties. Mere submission of learned counsel for the respondent that petitioner herself has not stepped into witness box to depose, so an adverse inference is to be drawn against her is not tenable in view of case law as reported in 2003 (1) RCR 431 Girdhari Lal Vs. Baljit Singh. Relationship of landlady and tenant between the parties has been duly proved on record. Respondent has failed to prove on record how the present petition has not been filed by duly authorized person as both the attorneys dated 22.6.1982 and 17.6.2002 have been duly proved on record. Accordingly, both the issues No. 2 and 3 are decided against respondent and in favour of the petitioner.”

13. Though the petitioner stated that rate of rent was ₹ 100/- per month yet during the course of evidence he tried to set up a case that rate of rent was ₹ 50/- per month but that would not be so relevant for

disposal of the instant petition as tender of rent has not been made. Even during the pendency of eviction petition, the petitioner moved an application before the Rent Controller, for tendering the arrears of rent but that application was subsequently withdrawn.

14. Five Judges Bench of Hon'ble Supreme Court in **Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh, (2014) 9 SCC 78**, held that the consideration or examination of the evidence by the High Court in revisional jurisdiction under the Rent Control Act is confined to find out that finding of facts recorded by the court/authority below is according to law and does not suffer from any error of law. A finding of fact recorded by court/authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. To satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to re-appreciate or reassess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.

15. With the aforesaid observations and findings, there is no escape from the fact that relationship of the landlord and tenant was fully

established and this is a finding of fact on correct appreciation of evidence by both Courts below for which there is no scope of interference by this Court in exercise of its revisional jurisdiction.

16. Both the revisions CR-4831-2014 and CR-4832-2014 are dismissed.

February 4, 2015
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(R.P. NAGRATH)
JUDGE