

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CR 532 of 2012

Date of Decision: August 3, 2015

Satish Kumar

.....Petitioner

Vs.

Om Parkash

.....Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.Ajay Jain, Advocate
for the petitioner.

Mr. Amit Jain, Advocate
for the respondent.

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M.M.S. BEDI, J.

Landlord has filed this revision petition against the order passed by the Appellate Authority, Hissar, under the Haryana Urban (Control of Rent and Eviction), Act, 1973, for short 'the Act', while hearing the appeal of tenant- respondent against ejectment order dated November 2, 2007, permitting the amendment of the written statement and remanding the matter to the Rent Controller to frame additional issue and to record evidence by giving one opportunity each to both the parties and decide the ejectment

petition afresh. The ejectment order passed in favour of the petitioner by the Rent Controller has been set aside.

Brief facts relevant for the decision of the present case are that petitioner had filed an eviction petition against tenant- respondent from a shop mentioned in heading of the plaint on the ground of personal necessity claiming that the shop was required by the petitioner for use of his two sons, namely, Naveen Kumar, aged 21 years and Shubham aged 19 years and that he was not occupying any shop in urban area of Hisar city and that his two sons had also not vacated any shop after 1949 and that they had sufficient knowledge to carry out the business in the shop in dispute.

The Rent Controller had held that the landlord- petitioner has been running the business of bangles in Khazanchiyan Bazaar, Hisar and both his sons also worked with him. In order to rebut the said plea it was pleaded by the tenant- respondent that the family of the petitioner had many shops in Tilak Bazaar and Khazanchiyan Bazaar and out of these, one shop is lying vacant in Sham Street in Tilak Bazaar. The Rent Controller arrived at a conclusion that the respondent failed to prove that the family of the landlord- petitioner owned many shops in Tilak Bazaar and Khazanchiyan Bazaar. The Rent Controller observed that though earlier an application filed by the petitioner on the ground of personal necessity had been dismissed but it will not debar the petitioner to file petition for personal necessity for his sons and that he cannot bound his both sons to work with him. It was observed by the Rent Controller that the sons of the petitioner

wanted to start new business and when the premises was rented out, the sons were minor and there was no necessity to file the eviction petition. The said finding is not challenged before the Appellate Court. Tenant- respondent sought amendment of the written statement claiming that during the pendency of the rent petition, the circumstances had changed and that he wanted to incorporate certain pleas. The following para was permitted to be added in the written statement:-

“Para No 10 of the petition is wrong and baseless and is denied specifically. It is incorrect that the shop in question is required by the petitioner for the use of his two sons. It is further incorrect that the petitioner is not occupying any shop in urban area of Hisar City as well as State of Haryana. The petitioner is in the habit of filing false applications for eviction on fabricated grounds. Previous to the present application the petitioner had filed an eviction application on the ground of personal necessity which was dismissed by the Court of Shri Ajay Tewatia, Rent Controller Hisar on 26.05.2003 against which the petitioner filed an appeal which too has been dismissed by Smt.Anita Chaudhary, the Appellate Authority, Hisar on 27.10.2005. As such, this ground of personal necessity for the petitioner does not exist. Moreover the petitioner owns and possesses other shops

in Hisar. Beside it he has acquired three shops on the demise of his mother Smt. Ram Pyari on 08.08.2007 i.e. one huge double storey shop bearing MCH No. 9/11 having an area of 20' x 60' in Bazaar Khazanchiyan, Hisar where wholesale business of bangles is carried having annual turnover in crores and two other shops forming part of MCH No. 91/20-C in Tilak Bazaar, Hisar. Another shop owned by Kanshi Ram adjoining to the demised shop earlier got vacated by him from Gobind Ram of same size as that of shop in dispute is lying vacant at the spot. As such the petitioner is not entitled to get the shop vacated under the tenancy of respondent on this ground.”

The application was hotly contested by the landlord- petitioner denying the fresh averments made in the application.

The Appellate Authority arrived at a conclusion that the amendment became necessary on account of the subsequent event of death of Ram Pyari and inheritance of three shops by the landlord/ petitioner. By allowing the amendment, the Appellate Authority remanded the matter back to enable the tenant to establish that additional three shops inherited by the landlord were lying vacant and to decide the petition afresh by giving opportunity to the tenant- respondent.

Mr. Ajay Jain, learned counsel for the landlord-petitioner has argued that in view of the judgment in **Raghu Nath Jalota Vs. Romesh Duggal and another**, 1979 (2) RCR (Rent) 501, the Appellate Authority has got no jurisdiction to remand the case to the Rent Controller for entirely fresh decision and that the Appellate Authority can make only further inquiry either by itself or through Rent Controller as the object of the Act is to provide a summary and expeditious mode of disposal of case and rid the authorities of shackles of technical procedure of CPC. He also placed reliance on the judgment of **Krishan Lal Seth Vs. Pritam Kumari**, 1962 (1) ILR (Punjab 310 and **Ganga Parshad Vs. Shri Ram Singh and another**, 1989 (2) PLR 608, wherein it has been held that the only course open to the Appellate Authority is to get a report from the Rent Controller by directing to hold an inquiry on the issue framed by the Appellate Authority and submits its report. It was argued that the Appellate Authority had wrongly allowed the amendment of the written statement at appellate stage.

On the other hand, learned counsel for the respondent has submitted that on account of subsequent even of three shops having been acquired by the landlord on death of Smt. Ram Pyari on August 8, 2007 and another shop having been got vacated by the landlord from Gobind Ram, the petitioner- landlord is not entitled to seek eviction.

I have heard learned counsel for the petitioner, counsel for the respondent and carefully considered the facts and circumstances of the case.

So far as the authority to remand the case by Appellate Authority is concerned, in appropriate case it is always open to the Appellate Authority to remand the case, following the principles of CPC as enshrined in Order 41 Rules 23 and 25 CPC. Civil Court has got jurisdiction under Order 41 Rule 25 to frame issue and refer the same for trial to the Court from whose decree the appeal is preferred incase it has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential for the right decision of the suit upon merits. In the exercise of powers under Order 41 Rule 24 CPC, the Appellate Court can issue a direction to take additional evidence for adjudication of the additional issue. In such situations, the lower Court returns a finding on appreciation of evidence to the Appellate Court alongwith the reasons. The provisions of Section 15 (3) of the Act enable the Appellate Authority to make further inquiry as it thinks fit personally or through the Controller. The Division Bench of this Court in **Raghu Nath Jalota's** case (supra) considering the scope of provisions of Section 15 (3) of the Act in context to provisions of Order 41 Rules 23 and 25 CPC had held that the Appellate Authority can make only further enquiry either by itself or through Controller.

Seen in context to the law laid down in **Raghu Nath Jalota's** case (supra), the only fault which can be found in the judgment passed by the Appellate Authority is that it has wrongly set aside the order passed by the Rent Controller after allowing the amendment but at the same time, it is

observed that the Appellate Authority has safeguarded the rights of the landlord- petitioner by observing that Rent Controller shall take amended written statement on the file and permit rejoinder to that and if necessity arises frame an additional issue and record the evidence after giving one opportunity to both the parties and decide the application afresh.

The order of the Appellate Authority deserves to be modified in the light of the authority of the Appellate Authority under Section 15 (3) of the Act by ordering that the written statement permitted to be taken on record by the Appellate Authority would be permitted to be rebutted by a rejoinder. The Rent Controller would permit one opportunity to both the parties to produce evidence in context to the amended written statement. The evidence recorded by both the parties will be sent to the Appellate Authority within a period of three months by giving reasonable effective opportunity to both the parties to produce their evidence. The additional evidence recorded will be sent by the Rent Controller to the Appellate Authority. The Appellate Authority will take into consideration the additional evidence produced and decide the appeal on the basis of the evidence which is produced before the Rent Controller. It is made clear that since the amendment has been sought by the tenant – respondent, the evidence of the tenant- respondent will be recorded prior to giving an opportunity to the landlord-respondent to produce rebuttal evidence which will be read in addition to the evidence already produced in affirmative by the Appellate Authority.

Finding of the Appellate Authority setting aside the judgment of the Rent Controller is hereby set aside. However, the order of remand to the extent of permission of amendment on the basis of subsequent event, permission to file rejoinder to the petitioner and grant of opportunity to both the parties to produce evidence in context to the amendment is upheld. The Appellate Authority will decide the appeal afresh on the basis of the material provided by the Rent Controller within a period o prescribed mentioned herein below. The Appellate Authority is further directed to decide the appeal within a period of three months after the receipt of report- material from the Rent Controller. Parties are directed to appear before the Rent Controller on August 22, 2015.

With the above observations, the revision petition is partly allowed.

August 3, 2015
sanjay

(M.M.S.BEDI)
JUDGE