

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.6713 of 2015
Date of decision: 02.11.2015

Ramesh Kumar

... Petitioner

Versus

Amarjeet Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Pritam Saini, Advocate for the petitioner.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not? YES
3. Whether the judgment should be reported in the digest?

ARUN PALLI J. (Oral)

Vide order being assailed, dated 30.09.2015, ejectment of the petitioner-tenant had since been ordered as a consequence of the order of this court dated 19.02.2015, rendered in CR-979-2011, vide which he was declined leave to contest the proceedings under Section 13-3(A) of the Haryana Urban (Control of Rent & Eviction) Act, 1973 (for short, 'the Act').

What indeed has led the parties to the present stage; respondent-landlord had filed a petition under Section 13-A of the Act and prayed for ejectment of the petitioner from the demised premises i.e. a shop, on account of personal necessity. Vide order dated 18.12.2010, petitioner was granted leave to contest the eviction petition. Being aggrieved against

the said order, respondent-landlord approached this court vide Civil Revision No.979 of 2011, which was accepted vide order dated 19.02.2015 and the order granting leave to contest to the petitioner was set aside. Concededly, the order, dated 19.02.2015, passed by this court was not assailed any further and had, thus, attained finality. Subsequently, petitioner moved another application before the Rent Controller, since the consequential order of ejectment was yet to be passed, to stay further proceedings, as after the petitioner was declined leave to contest on 19.02.2015, respondent-landlord had succeeded to get another premises vacated. However, vide a detailed order dated 03.07.2015, learned Rent Controller dismissed the said application. Being aggrieved, again, petitioner approached this court vide Civil Revision No.4653 of 2015. However, the said revision petition was dismissed as withdrawn, vide order dated 30.07.2015, with liberty to the petitioner to move a fresh application for leave to defend, if permissible in law. As a result, petitioner moved second application seeking leave to contest the proceedings. On a due and thoughtful consideration, even the said application was dismissed by the Rent Controller on 24.08.2015. And, once again, the petitioner approached this court vide yet another Civil Revision No.5818 of 2015, assailing the order dated 24.08.2015. The said revision petition was dismissed by this court on 07.10.2015, by passing the following order:

“Learned counsel for the parties are *ad idem* that with efflux of time, the matter in issue has since become infructuous, the same be disposed of as such.

Dismissed as having become infructuous.”

And, for consequential order of eviction, after declining leave to contest the proceedings, was passed by the Rent Controller on 30.09.2015 (Annexure P2), again petitioner is back before this court vide the present revision. The conclusion that has been recorded by the Rent Controller in support of its order reads as thus:

“3. Initially, leave to contest was allowed by the 1d. Predecessor Court but later on it was declined by the Hon’ble High Court vide order dated 05.05.2011. Therefore, at present, the respondent does not have leave to contest but time and again by filing several applications, he tried to take the ground that the petitioner has got vacated another shop in the same building, therefore, now in view of the provision under Section 13-3(A) of the Haryana Urban (Control of Rent & Eviction) Act, 1973, the petitioner is not entitled for eviction of the shop in dispute.

4. Now, as the leave to contest is not there with the respondent in the present case, and the petitioner by his evidence led through Ex.PW1/A and other documentary evidence has proved the relationship of landlord and tenant between the parties. Furthermore, the fact that he has retired from the Air Force has not been disputed rather proved by the petitioner and his bonafide necessity is also proved from the oral as well as documentary evidence led on record. Despite not having leave to

contest with the respondent even if the ground taken by the respondent is considered that the other shop has been vacated by the order of the Ld. Rent Controller, Ambala in favour of the petitioner and therefore, he is not entitled to the eviction of respondent from the shop in dispute by way of present petition. The law is very clear in this regard and in the case titled as Zenobia Bhanot Vs. P.K Vasudev & Anr 1996 HRR 6, Hon'ble Supreme Court has held that

“the petitioner is entitled to eviction of the respondent from commercial as well as residential part of any property if that property is part of that building.”

5. In the present petition, the eviction is sought for property No.7512, Shop No.2, Ward No.4, Shukulkund Road, Ambala City whereas shop No.1 of the same building i.e. property No.7512 has been vacated. Therefore, the parts of the same property can be vacated at the instance of the petitioner and there is not such bar as alleged by Ld. Counsel for the respondent. Ld. Counsel for the petitioner also relied upon the case laws in:-

- i Surinder Kumar Vs. Smt. Leela Sharma & Ors. 2012(1) LAR 318 (P&H)**
- ii Om Parkash Vs. Ashwani Kumar Bassi 2010(4) RCR Civil 163.**
- iii Suman Vs. Bhagat Ram 2008(1) HRR 30 (P&H)**
- iv Om Parkash Vs. Ashwani Kumar Bassi 2008(1) RCR Civil 568 (P&H)**
- v Babu Ram Vs. Naresh Kumar 2006(2) HRR 587**

6. As per the statutory provisions, where leave to contest has been declined, the statement made by the landlord in the application shall be deemed to be admitted by the tenant and the landlord is entitled to an order of eviction forthwith. It has been observed in Kamlesh Kumar Vs. Yoginder Pal 1999 HRR 205 that once to leave the contest is declined, there is no need of recording the statement of the landlord. Further, in M.D. Rao Vs. Satish Augustin 1995(1) RCR 404 Raj similarly it was observed that where leave to contest is declined, Rent Controller is bound to pass an order of eviction.”

I have heard learned counsel for the petitioner and perused the paper book.

Concededly, the petitioner was declined leave to contest the eviction petition vide order dated 19.02.2015, passed by this court. Indisputably, the said order was not assailed any further and had, thus, attained finality. The position of law is settled that once a tenant is declined leave to contest, the order of eviction has to be followed forthwith and is consequential. Just because, post passing of the order dated 19.02.2015, and after it had attained finality, respondent-landlord got another premises vacated, would not entitle the petitioner to move a second application seeking leave to contest and reopen the matter. In any case, petitioner indeed moved another application, which too was dismissed by the Rent Controller vide order dated 24.08.2015. So much so, a revision petition preferred against the said order was

dismissed as withdrawn. The present revision against a consequential order of eviction, dated 30.09.2015, is wholly misconceived, for, once the order dated 19.02.2015, declining leave to the petitioner has become final, he cannot be permitted to re-contest the matter, that too in a revision assailing a consequential order of eviction.

Learned counsel for the petitioner could not point out as to how the conclusion that has been arrived at by the Rent Controller was either contrary to the position on record or suffered from any material illegality.

That being so, no interference is warranted in exercise of revisional jurisdiction, under Section 13-3(A) of the Act. Petition being devoid of merit is accordingly dismissed.

November 2, 2015
Rajan

(Arun Palli)
Judge