

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.723 of 2014 (O&M)

Reserved on:08.01.2015

Date of decision:21.01.2015

A.K.Goel

.....Petitioner

Versus

Harjeet Kaur & others

.....Respondents

CORAM : HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr.G.C.Shahpuri , Advocate, for the petitioner.

Mr.A.K.Chopra, Sr.Advocate

with Mr.G.S.Bhandal, Advocate, for respondent No.1.

G.S.Sandhawal J.

Present revision petition has been filed by the petitioner-tenant, under Section 15(6) of the Haryana Rent Control Eviction Act, 1973 (for short, the 'Act') against the orders of ejectment passed by the Rent Controller, Yamunanagar at Jagadhri and against the appellate order dated 29.11.2013.

The sole argument of counsel for the petitioner is that the benefit of the observations made by the Apex Court in **Rakesh Wadhawan Vs. Jagdamba Industrial Corporation 2005 (5) SCC 440**, could be extended to the petitioner and he should have been granted the opportunity to tender the rent. He has, accordingly, submitted that the judgment of this Court in **M/s Rachitech Engineering Pvt. Ltd. Vs. M/s Kundan Steel Pvt. Ltd. 2007 (3) PLR 386** would not be applicable since it was not that the status of the petitioner as a tenant had been contested. It is submitted that in the said

case, since the relationship of landlord-tenant had been denied, it has been held that there was no necessity of the assessment of the provisional rent. Accordingly, it is contended that in the present case, the petitioner-tenant had already taken the plea that the landlord was the husband of respondent No.1 and therefore, as such, the factum of the petitioner being a tenant was never denied.

A perusal of the paperbook would go on to show that respondent No.1 filed the petition under Section 13 of the Act, for ejectment from the shop attached with house No.136 situated at Chhoti Line near Santpura, Yamunanagar, boundaries of which were given in the rent petition. It was alleged that the petitioner was a tenant on a monthly rent of ₹900/- per month from 16.04.1988 and there is a relationship between them of landlord-tenant and the rent was liable to be increased after the expiry of every 5 years, as per the rent deed. Ejectment was sought on the ground that after 16.12.2003, payment of rent had not been made. Arrears of rent for a period of 32 months was claimed from 16.12.2003. Second ground of eviction was that respondents No.2 & 3 had taken the shop at rent from the present petitioner, without the consent of the landlady and thus, subletting was alleged. The petitioner took the plea that the rate of rent was ₹500/- per month and that he had paid the rent till March, 2006. The shop in dispute was let out by Darshan Singh, the husband of respondent No.1 in the year 1996, to the petitioner, who is the *karta* of the joint HUF and respondent No.2 was the father of the tenant whereas respondent No.3 was the younger brother and they were living in the joint family in House No.136 situated at Chhoti Line near Santpura, Yamunanagar. The enhancement clause was denied and the rent deed was alleged to be a forged one. The husband of

respondent No.1 had been receiving regular rent from March, 2006 but no receipt had been issued against the rent being tendered @ ₹500/- per month, as per the provisional assessment made on 10.11.2006, which had been received under protest by respondent No.1. It was denied that the premises had been sublet to a third person. A counter-claim was also filed by the petitioner that the respondent had paid rent to Darshan Singh that he had not issued any receipt and thus, a sum of ₹13,500/- was tendered in excess which was not due, apart from the fact that karyana goods had been purchased to the extent of ₹15,000/- by respondent No.1 and her husband, price of which had not been paid to them.

Respondent No.1 had placed on record the rent agreement dated 16.04.1988 (Exhibit A1) and the report of the handwriting expert was also placed on record as Exhibit A7/A. The landlady also appeared as AW6 to prove the rent note and enhancement clause along with the attesting witnesses, namely, Gopal Singh as AW4 and Chaman Lal as AW5. The stamp vendor, Mohinder Pal was examined as AW2 to prove the entry made in the register (Exhibit A1) and the fact that stamp paper had been purchased in the name of the present petitioner. The stand taken by the petitioner, while appearing as RW2, was that the rent agreement (Exhibit A1) was not executed by him and it was a forged document.

The Rent Controller took into consideration the report of the handwriting expert who had compared the signatures of the bank account maintained in the Punjab & Sind Bank and came to the opinion that it was written by one and the same person. Rather, the plea taken by the tenant was that Darshan Singh, the husband of respondent No.1-landlady had even got the bank account opened in his name fraudulently by forging his

signatures and that he had obtained the copy of his PAN number, ration card, prior to the filing of the petition and even the bank account was got opened by him and got operated by him. It was noticed that no complaint had been filed to this effect and even the Officer of the Bank had been produced to prove the bank account in the name of the present petitioner and a finding was, accordingly, recorded that the account was being regularly operated. The photograph of the present petitioner was also there in the account opening form. It was noticed that the husband of respondent No.1 had introduced the petitioner to the bank and merely because of this fact, it could not be said that he had forged the signatures. It was noticed that the signatures of the petitioner was present on the rent note on all the three pages and at two places in the last page. Accordingly, keeping in view the statement of the witnesses to the rent deed, it was held that the relationship had been duly proved on record.

The value of the stamp paper, of which the rent note was executed, was held to be duly commensurate with the stamp rate on the rental value of ₹900/- and it was noticed that the stamp paper was purchased way back on 16.04.1988, when the tenancy commenced and the husband of respondent No.1 could not be expected to be using the stamp papers 8 years prior to the filing of the ejectment petition, which was filed in the year 2006. Accordingly, a categorical finding was recorded that it had been established that respondent No.1 had been given the shop on rent to the petitioner vide the said rent note. Nothing had been brought on record that the husband of the petitioner was the landlord and merely because in the house tax register, the husband has been shown as an owner would not make him an owner as such.

The rate of rent was also held to be ₹900/- per month and it was held that the enhancement clause was not applicable as nothing had been shown that the rent had ever been paid at the enhanced rate. Accordingly, it was held that the rent which had been earlier assessed at ₹500/- per month was on the lower side, after taking into consideration the rent of another shop in the vicinity and the tender made was a short tender. The opportunity to pay the rent was, accordingly, denied on account of the judgment of this Court in M/s Rachitech Engineering Pvt. Ltd. (supra). The argument that goods had been bought and ₹15,000/- had to be adjusted was not proved as nothing was brought in evidence to substantiate the same. The ground of non-tendering the rent being without justification and not in favour of the petitioner, thus, ejectment was ordered.

The Appellate Authority dismissed the appeal on the ground that the tenant was not entitled to make good the deficiency of rent and directed respondent No.1 to hand-over the security amount of ₹25,000/-, in view of the terms and conditions of the rent note.

The argument, thus, which has been raised by counsel for the petitioner that the status as a tenant was never denied and an opportunity should have been granted to pay rent as there was dispute *inter se* as to who was the landlord, is without any basis. A categorical stand had been taken that the rent note itself was forged and therefore, the relationship of landlord-tenant had been denied. This Court in a series of judgments has consistently followed the view that the benefit of providing an opportunity to the tenant to tender the rent is not available when the relationship is denied. The principle on the basis of which this view is taken is once the tenant had kept back the rent which was to be provisionally assessed and

given at the first stage, he cannot take the benefit of the pendency of the rent petition and hold back the rent which is legally and validly payable. While defending the eviction proceedings, he cannot deny the payment of rent and thereafter, submit that he should be given an opportunity to pay the same, after the issue of relationship is found against him. Reliance can be placed upon **Hukma Devi Vs. Bhagwan Dass 2003 (1) RCR (Rent) 533**, wherein, after placing reliance upon the judgment in **Shella Vs. Firm Prahlad Rai Prem Prakash 2002 (3) SCC 375**, it was held that where the tenant refuses the liability to pay rent, the question of presumption would not arise at all and unscrupulous tenant cannot be permitted to take a stand that he is not tenant under the landlord and then claim that he is a tenant and be permitted to deposit the arrears of rent. In **Devinder Singh Puri Vs. B.N.Rampal 2004 (2) RCR (Rent) 216 (P&H)**, this Court has held as under:

“10. It is also well-settled that in cases where the tenant raises dispute with regard to the status of his landlord and alleges that intact the respondent is not his landlord then he would obviously be not required to make any payment of rent. In such circumstances he cannot expect the Rent Controller to first draw a provisional order of assessment and then claim an opportunity to make payment of arrears of rent. In other words, the judgment of the Supreme Court in the case of **Rakesh Wadhawan v. Jagdamba Industrial Corporation and Ors. 2002(5) SCC 440**, interpreting Section 13(2)(i) of the Act would not be applicable. This Court has taken the afore-mentioned view in the case of **Rama Nand Shastri v. Gian Singh 2003(1) R.C.R. (Rent) 734 (P&H)**. Therefore, the plea which could have been raised on the basis of the judgment of the Supreme Court in **Rakesh Wadhawan's case (supra)** would not be available to the tenant-petitioner in the instant case.”

This view was followed in **Jagdish Singh Vs. Mohan Lal 2004**

(2) RCR (Rent) 114, Jagdamba Tea Factory, Amritsar Vs. Parshotam Kishan 2008 (3) RCR (Civil) 17 and M/s Gawritex Industries Ltd. Panchkula Vs. Sqn. Ldr. Gurdial Singh (Retd.) & others 2009 (2) RCR (Rent) 213.

Thus, keeping in view the above settled position and also keeping in view the fact that this Court is exercising revisional jurisdiction as held by the Constitutional Bench of the Apex Court in Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh 2014 (9) SCC 78, this Court is of the opinion that the findings which had been recorded by the Courts below do not warrant interference by this Court. Accordingly, finding no merit in the present revision petition, the same is hereby dismissed.

21.01.2015
sailesh

(G.S.Sandhawalia)
JUDGE