

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

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Civil Revision No.7716 of 2015(O & M)

Date of Decision:20.11.2015

Jatinder Kumar

....petitioner

Versus

Gulshan Kumar and another

.....respondents

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

- 1.Whether Reporters of local papers may be allowed to see the judgement?**
- 2. To be referred to the Reporters or not? YES**
- 3. Whether the judgment should be reported in the Digest?**

Present: Mr.Sandeep Arora, Advocate
for the petitioner

ARUN PALLI, J.(ORAL):-

Ejectment of the tenant-petitioner was ordered by the Rent Controller, Jalandhar, vide order dated 16.11.2013, on the ground of subletting. Appeal preferred against the said order was dismissed, vide order dated 02.09.2015, being barred by time. And that is how, the tenant-petitioner is before this Court.

In brief, the case set out by the landlord was that tenant-Jatinder Kumar had sublet the demised premises i.e. a shop for a consideration to respondent No.2, without consent or permission of the landlord. In fact, the tenant had moved abroad and surrendered possession to respondent No.2, who was conducting business and in exclusive control of the premises.

In defence, it was pleaded, inter alia, that there never existed any relationship of landlord and tenant between the parties. And, in any case, respondent No.1 had not sublet the demised premises to respondent No.2

On a due and comprehensive consideration of the matter in issue and the evidence on record, the Rent Controller concluded that although the plea set out by the tenant was that respondent No.2 namely Naresh Kumar, was his employee, whereas, respondent No.2 while appearing as RW1, conceded in his cross examination; ***“I do not know as to whether Jatinder Kumar has gone foreign country. I also do not know that since how many years Jatinder Kumar has not come to the shop in dispute. I do work in the shop in dispute since morning till evening but I do not know whether Jatinder Kumar come there or not. I do not know as to whether I get any salary from Jatinder Kumar. I also do not know as to whether Jatinder Kumar has taken a shop in dispute on rent from Gulshan Kumar.”*** Thus, it was fully established that Naresh Kumar was not an employee of the tenant. He also pleaded ignorance to the fact; whether the tenant had moved to a foreign country and for many years, he had not come to the shop. But he was working in premises from morning to evening. Likewise, Harish Kumar (RW2), brother of the tenant, conceded in his cross examination; ***“Jatinder Kumar has gone to Australia from the last 4/5 years. He not appointed me as attorney. Naresh Kumar is working in the shop.***

Partnership deed was written between us two brothers. The

partnership was executed while respondent No.1 was going abroad.” Although, brother of the tenant-petitioner sought to plead partnership between the two, but neither any partnership deed nor any other evidence was led to show that they were ever partners in business. In fact, vide a formal order dated 18.05.2012, Rent Controller had directed the tenant to appear in person but he did not choose to, thus, a fair inference could be drawn that he was not in the country. Although, the written statement, on behalf of the tenant, was filed, by his attorney, but he never appeared to prove his case, or to rebut the claim of the landlord. No doubt, the initial onus to prove that the tenant had indeed sublet the premises to Naresh Kumar lay upon the landlord but after he discharged the initial onus, the tenant was under obligation to adduce cogent evidence and prove that he was still in occupation and control of the premises and had not surrendered possession in favour of Naresh Kumar. Further, in what capacity, Naresh Kumar was in occupation of the premises. However, tenant failed to lead any such evidence. As the exclusive possession of Naresh Kumar over the demised premises was established, the only conclusion one could arrive at was that the demised premises was sublet by the tenant. So much so, the tenant had even denied the very relationship of landlord and tenant between the parties and issue No.4 was specifically framed in this regard. However, the tenant did not choose to press the said issue at the time of arguments.

As indicated above, appeal filed by the tenant was dismissed being barred by time. The precise reasons recorded by the

Appellate Authority, in support of its order, read as thus:

“8. Let us now examine, if the applicant has been able to show a reasonable explanation for non-filing of appeal within a period of limitation. Only reason cited by the applicant is that his counsel did not inform him about the decision and had been giving next dates till recently. But there is nothing on record to believe such version. The applicant/appellant has not even attached or relied upon diary of his counsel nor his affidavit, to substantiate his version. Otherwise also, the applicant appears to be careless and negligent, in not appearing in the Court, to ascertain the exact stage of the petition, filed against him. The version of the applicant further appears to be frivolous, from the fact that he even denied the relationship of landlord and tenant between respondent Gulshan Kumar and himself, which was declared to be existing between them, by the Rent Controller, vide order dated 16.11.2013.

9. In the above circumstances, the applicant cannot take any benefit from the judgement cited by his counsel, which does not apply to the peculiar facts of the present case. Hence, finding no ground, muchless sufficient to condone the delay (irrespective of its length), the application deserves to be and is hereby dismissed.”

Ex facie, eviction of the petitioner was ordered on 16.11.2013. Copy of the order of ejectment dated 16.11.2013 was

applied on 15.01.2014, which was prepared on 21.01.2014 and its copy was received by the petitioner on 23.02.2014. The interim orders on record showed that Sh.Neeraj Luthra, Advocate, had been appearing on behalf of the petitioner, throughout the proceedings before the Rent Controller. Therefore, the version of the petitioner that his counsel did not inform him of the fate of the eviction petition and the decision therein, was wholly false. Having reconciled with the order of ejectment, in fact, he by choice did not apply and obtain the copy of the order dated 16.11.2013. Quite obviously, he was not in the country to pursue his interest. Thus, filing the appeal subsequently was nothing but an afterthought and merely speculative in nature. Of course, on showing a sufficient cause, the delay that had occurred in filing the appeal, could always be condoned but not when a false plea and a version, that lacked credibility was set forth. Even otherwise, evidence led by the petitioner himself showed that he had moved to Australia. Nothing was brought on record to show that he was still occupying the premises and conducting business. Rather, evidence on record proved that Naresh Kumar was in exclusive possession and control of the demised premises. Nothing was brought on record to explain as to in what capacity, he was in occupation of the premises. Concededly, neither the tenant nor his attorney appeared in the witness box to defend his interest. Therefore, the only and the inevitable conclusion that could be reached was that petitioner had indeed sublet the demised premises.

Learned counsel for the petitioner could not point out

as to how the conclusions arrived at by the Rent Controller on merits,

or by the Appellate Authority declining the application for condonation of delay in filing the appeal, were 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 15(5) of the East Punjab Urban Rent Restriction Act, 1949. The petition being devoid of merit is accordingly dismissed.

20.11.2015

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(ARUN PALLI)
JUDGE