

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision No. 3862 of 2003

DATE OF DECISION : December 09, 2015

Savitri Devi & ors.

..... PETITIONER(S)

VERSUS

Subhash Chand & anr.

.... RESPONDENT(S)

CORAM : HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Akshay Bhan, Sr. Advocate, with
Mr. A.S. Talwar, Advocate, for the petitioners.
Mr. Binderjit Singh, Advocate, for the respondents.

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1. Whether Reporters of local newspapers may be allowed to see the judgment? YES/NO
2. To be referred to the Reporter or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

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ARUN PALLI, J. (Oral)

An eviction petition preferred by the landlord (petitioners) was dismissed by the Rent Controller, vide order, dated 21.03.2001. As even an appeal preferred against the said order failed and was dismissed vide judgment dated 04.06.2003,

the landlord is before this Court, vide this revision petition.

Briefly, the eviction of the tenant (respondents) was claimed on account of non-payment of rent, for the case set out by the landlord was that the tenant (respondents) was in arrears w.e.f. 27.04.1991, @ ₹1,800/- per month. And, was thus, liable to be evicted.

In defence, it was pleaded, inter alia, that the tenant had taken the premises at the rent of ₹800/- per month w.e.f. 22.10.1990. The Rent Note, being relied upon by the landlord, to claim rent at ₹1,800/- per month, was a forged and fabricated document. In fact, the tenant was entitled to recover an amount of ₹10,000/- from the landlord that he had borrowed and executed a pronote and a receipt in favour of the tenant.

On a consideration of the matter in issue and the evidence on record, both the authorities concurrently concluded that the Rent Note, Exhibit A-1, propounded by the landlord was indeed a forged and fabricated document and, thus, landlord failed to prove that rent of demised premises was ₹1,800/- per month. The reasons assigned by the Rent Controller in support of its order, and affirmed by the appellate authority, read as thus:-

“13. After considering the rival contentions of the learned counsel for the parties, I am of the view that applicant has relied on rent note copy of which is proved as Ex.A1. The respondents have relied on rent copy of which is brought on file as Mark RA. Both are photostat copies. No permission was sought by the respondents to prove the rent note, copy of which is Mark RA. On the other hand the applicant sought

permission and applicant was allowed to lead secondary evidence of rent note which is proved stand of the respondents is that signatures of Rakesh on Ex.A-1, were transplanted from mortgage deed Ex.R2 and signatures of Subash Chander on Ex.A1 were transplanted from rent note Mark-RA. Those are the exact replica and superimposition in their dimensions. Respondents examined Dr.Atul K. Singla expert RW2, who make a specific report that Ex.A-1 was prepared by transplanting the signatures. The counsel for the applicant cross-examined him in length. It is his specific stand that this was a fabricated document and photo copy was prepared by transplanting the signatures. The argument of the learned counsel for the applicant that RW2 admitted that terminal portion of work 'Chand' had not appeared in the photo copy is explained by RW2 himself that said portion became lighter and lighter in the process of transplanting the signatures, so word 'Chand' has not appeared in Ex.A-1. RW2 also prepared transparencies of questioned signatures and specimen signatures which are proved as Ex.R4 to Ex.R-7, which prove that signatures of Rakesh Kumar on Ex.A-1 is the exact replica of signatures of Rakesh Kumar on mortgage deed Ex. R2 and signatures of Subash Chand on Ex.A-1 in the exact replica of Subash Chand on Mark RA. There is no dissimilarity in the formation, size, spacing and other writing characteristics. RW2 was examined on 20.3.1998 whereas Sh. Varinder Bhushan Bhatnagar expert of applicant was examined in additional evidence on 12.6.2000. The report of RW2 was before Sh. Varinder Bhushan Bhatnagar expert, but he did not give the opinion that said signatures are not the result of transplanting but he gave the opinion that signatures on Ex.A-1 were not prepared

with the help of forgery, since it was respondents that these were the result of transparent forgery so report of Shri Varinder Bhushan Bhatnagar expert AW5 is liable to be ignored only on this ground. His opinion that signatures cannot be transplanted is also without any basis. So his report does not help the case of applicant. I am in respectful agreement with the authority Lal Singh cited (supra) that expert witnesses are generally interested and it is the opinion evidence. Evidence of expert can be acted upon when it is substantially corroborated. In the said case there were experts examined by both the parties. In the case in hand although there are expert examined by both the parties but the expert of applicant did not touch the matter in dispute and there is only report of RW2 expert with regard to the matter in dispute and he has given the definite opinion with reasons. The counsel for the applicant has failed to show that his opinion is wrong. So I am of the view that in this case opinion of RW2 cannot be ignored.”

Ex-facie, the report, Exhibit R-1, submitted by Dr. Atul K. Singla, Handwriting and Finger Prints Expert (RW-2), fully demonstrates that the Rent Note, Exhibit A-1, was a forged and fabricated document. Nothing could be pointed out as to how the opinion rendered by the Expert was either erroneous or liable to be discarded. No other evidence was led either to prove that the parties had indeed settled the rent at ₹1,800/- per month w.e.f. 27.10.1990.

The argument that has been advanced by the learned senior counsel for the petitioners that as the Rent Note i.e. Mark ‘RA’, remained unproved, the same could not be taken

into account, lacks conviction, for both the authorities had referred to the said document; since the handwriting expert (RW2) in his report (Exhibit R1) had determined that the signatures of tenant-Subhash Chand on rent note (Exhibit A1) were transplanted from the document Mark RA and it was for that limited purpose the document, Mark RA, was referred to. In any case, Mortgage Deed (Exhibit R2) was an undisputed document and the definite opinion rendered by the expert was that signatures of tenant-Rakesh Kumar were also transplanted on rent note (Exhibit A1) from the said document. Likewise, the statement of RW1, that was recorded while considering the application of the landlord to lead secondary evidence to prove the Rent Note (Exhibit A1), was of no consequence while finally determining the validity and veracity of the said document, in the wake of the other evidence on record. That being so, the only and the inevitable conclusion both the authorities could arrive at was to hold that the landlord had failed to prove that the rate of rent was ₹1,800/- per month. Rather, the evidence on record showed that the shop in question let out at ₹800/- per month. Records show that the respondents had tendered the rent on the first date i.e. 15.02.1993, w.e.f. 22.04.1991 to 21.03.1993, with interest and costs, as assessed by the court. Thus, it was rightly concluded that the amount tendered by the tenant was neither short nor invalid.

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. Petition being devoid

of merit is, accordingly, dismissed in limine.

DECEMBER 09, 2015
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(ARUN PALLI)
JUDGE