

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

RSA NO.2149 OF 2006 (O&M)
DATE OF DECISION : 06/ 02 / 2015

Amarjit Singh

.... Appellant

Versus

K.D. Sharma & Sons through K.D. Sharma

.... Respondent

RSA NO.3787 OF 2009 (O&M)

Surinder Singh

.... Appellant

Versus

K.D. Sharma & Sons through its partner K.D. Sharma

.... Respondent

CORAM : HON'BLE MR. JUSTICE SURINDER GUPTA

* * * *

Present : Mr. A.P. Bhandari, Advocate for the appellant(s).

Mr. N. C. Kinra, Advocate for the respondent(s).

* * * *

SURINDER GUPTA, J.

1. Both the above captioned appeals have been taken up together for disposal as the similar controversy is involved therein.

2. The point in issue in these appeals is about the jurisdiction of the Civil Court if the suit is filed by the landlord seeking possession of the property situated within urban area which have been exempted from the provisions of East Punjab Urban Rent Restriction Act, 1949 (in short, Rent Act) for a specific period and suit was filed by the landlord during the period of that exemption under the provisions of Transfer of Property Act, 1882 but

during the pendency of the suit or appeal the exemption allowed ceases and the provisions of Rent Act have become applicable to that urban area.

3. The property in dispute is situated in SAS Nagar, Mohali which was declared a notified area on 28.12.1983 under Section 241 of the Punjab Municipal Act, 1911, therefore, the area of Mohali, administered by Municipal Council, Mohali, came under the category of urban area governed by the Punjab Municipal Act, 1911 as amended from time to time and the Rent Act became applicable to urban area of Mohali soon after the Notified Area Committee was constituted. The State Government vide notification dated 09.02.1984, exercising its powers under Section 3 of the Act exempted applicability of the provisions of the Rent Act to the building and rented land situated in the urban area administered by notified area committee, SAS Nagar, Mohali for the period commencing from 28.12.1983 till 31.03.1995. This exemption was extended from 01.04.1995 to 31.03.2000 vide notification dated 21.02.1997 and again from 15.04.2000 to 31.03.2005 vide notification dated 10.04.2001. The provisions of the Rent Act are applicable to the buildings and rented lands situated in the urban area administered by Municipal Council, SAS Nagar, Mohali w.e.f. 01.04.2005

4. M/s. K.D. Sharma and sons-respondents through its partner K.D. Sharma filed Civil Suit No.443 dated 01.12.1999 against Amarjit Singh s/o Gurpal Singh, appellant in RSA no.3787 of 2009. In the civil suit against Amarjit Singh, plaintiff-respondent sought the possession of first floor of SCO No.24, Phase VII, SAS Nagar, Mohali as fully described in the headnote of the plaint and recovery of ₹10,000 as arrears of rent. He also

sought mesne profit of suit property after filing of suit. This suit was decreed by the Additional civil Judge (Senior Division), Mohali and the appeal against the judgment and decree of the lower Court was dismissed with a clarification regarding the mesne profits.

5. Other suit (CS No.RT 387-A of 13.03.2002/24.07.2006) was filed by M/s. K.D. Sharma for possession of SCO 24 Phase VII, SAS Nagar (Mohali) consisting of one hall, a room on the back of hall, latrine, bathroom and common court yard on the back of the SCO No.24, Phase VII, Mohali and for recovery of Rs.11902/- as rent for the month of Feb. 2002 along with damages at the rate of Rs.23804/- per month from 07.03.2002 till the date of eviction.

6. Learned counsel for the appellant has argued that the provisions of the Rent Act became applicable to the suit property w.e.f. 01.04.2005 and a tenant can be ejected thereafter only under the provisions of the Rent Act. This has rendered all the decrees passed with regard to the rented property falling within the urban area administered by Municipal Council, SAS Nagar, Mohali in-executable and redundant. In support of his contention he has relied upon judgments of Supreme Court in the case of ***Lakshmi Narayan Guin vs. Niranjana Madok, 1985(1) R.C.R. (Rent) 27*** and ***Mani Subrat Jain vs. Raja Ram Vohra, AIR 1980 SC, 299*** and judgment of this Court in the case of ***Sawan Ram vs. Gobinda Ram and anr., 1980(2) RCJ 62; Krishan Lal and another vs. Krishan, 2010(2) Rent LR, 139; J.N. Katyal and another vs. Krishan Kapur @Bittu and another, 2005(1) R.C.R. (Civil) 303*** and ***Jagpat Rai vs. Gurdial Singh, 1991 (2) PLR 23.***

7. Learned counsel for the appellant has argued that judgment and decree passed by the Courts below being rendered inexecutable and unsustainable are liable to be set aside.

8. The learned counsel for the respondent argues that the suit filed during the exemption period when the Rent Act was not applicable to an urban area because of exemption allowed by State Government are to be taken to logical end. A decree for ejectment of tenant passed by the Civil Court during the period of exemption from the applicability of the Rent Act or thereafter which has become final, can be executed in spite of the bar contained in Section 13(1) of the Rent Act. In support of his contention he has relied upon the observations made by Division Bench of this Court in the cases of *Junaid Ali Khan and others vs. State of Punjab and others, 1998(1) RLR, 673; Shiv Kumar vs Surinder Pal, 1988(2) RCR(Rent) 417* and observations of Hon'ble Supreme Court in the case of *Firm Amar Nath Basheshar Das vs. Tek Chand, 1972 RCJ, 845* and *Nand Kishore Marwah and others vs. Smt.Samundri Devi, AIR 1987 Supreme Court, 2284*.

9. Perusal of the citations referred by learned counsel for the parties, clearly make out that it is no more *res integra* that if a suit is filed seeking eviction of tenant or recover of rent before the civil Court during the exemption period under Section 3 of the Rent Act and during the pendency of that suit or appeal the exemption period expires, right of the parties to suit would be seen on the date on which the suit was filed and the civil Court would continue to have the jurisdiction to try the suit and to take it to logical

end. Reference in this regard can be made to the observations of the coordinate Bench of this Court in the case of ***Dhir Global Industries Pvt. Ltd. vs. Gajraj Singh, 2014(3) RCR (Civil)***, which reads as follows:

“I have discussed all the judgments referred by both the parties in their favour and have come to a definite conclusion that if a suit is filed, for seeking eviction of the tenant and recovery of rent, before the Civil Court during the period of exemption in terms of Section 1(3) of the Act and during the pendency of the suit exemption period expires, the rights of the parties to the suit would be seen on the date on which the suit was filed, for the purpose of decreeing the suit, meaning thereby the Civil Court would continue to have the jurisdiction to try the suit to its logical end.”

10. All the citations referred by learned counsel for the appellant were comprehensively discussed in that case before reaching the above conclusion. In Rent Act, as applicable to Haryana State, the buildings constructed after the commencement of Act, are exempted from the application of its provisions for period of ten years. The observations in above referred citation dealing with exemption allowed under the Rent Act are squarely applicable to present case. In the case of ***Shiv Kumar (supra)*** Division Bench of this Court has observed that suit for ejectment filed prior to the expiry of exemption period of ten years is not hit by the provisions of the Rent Act after it becomes applicable.

11. Hon’ble Supreme Court in the case of ***Firm Amar Nath Basheshar Das (supra)*** after evaluating the question of exemption allowed

by the State Government, exempting the application of the provisions of Rent Act to certain buildings for a specific period concluded in para 6 as follows:

It is clear to our minds, as it was to the High Court that under clause(b) the filing of the suit within the period of exemption is the only condition that is necessary to satisfy one of the requirements of the exemption, the other requirement being the passing of the decree in respect of which no time has been prescribed. If the decree, as contended by the learned Advocate for the appellant, has to be obtained within the period of 5 years, there was no need to specify that suit had to be filed within that period because the exemption from the requirements of Section 13 is only in respect of the decree and not the suit. There was, therefore, no need to mention about the time of the filing of the suit.”

12. The Division Bench of this Court in case of ***Junaid Ali Khan and others (supra)*** under similar facts and circumstances in a case relating to SAS Nagar, Mohali has observed as follows:

“The Hon’ble Supreme Court held that the filing of the suit by itself does not confer any exemption because what is exempted from the provisions of Section 13 is the decree. A suit filed, therefore, must end in a decree though that decree may be passed subsequent to the expiry of the 5 years’ period during which exemption from the application of Section 13 has been granted. The filing of the suit within the period of exemption is the only condition that is necessary to satisfy one of the requirements of the exemption, the other requirement being the passing of the decree in respect of which no

time has been prescribed. In Ram Parkas-petitioner v. Smt. Surinder Sharma respondent, AIR 1981 Punjab and Haryana 297 a Full Bench of this Court held that a decree for ejectment of tenant passed by the Civil Court during the period of exemption from the applicability of the Urban Rent Restriction Act, 1949 or thereafter which has become final can be executed in spite of bar contained in Section 13(1) of the Rent Act.”

13. In case of ***Nand Kishore Marwah and others (supra)*** Hon’ble Supreme Court while evaluating similar proposition of law under the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, observed as follows:

“This clearly indicates that the restriction put under S.20 is to the institution of the suit itself and therefore it is clear that if the provisions of this Act applies then no suit for eviction can be instituted except on the grounds specified in the sub-sections of this Section. Keeping in view the language of this section if we examine the provisions contained in sub-s.(2) of S.2 it will be clear that for a newly constructed building the provisions of this Act will not apply for 10 years and therefore so far as the restriction under S.20 is concerned they will not apply and therefore, it is clear that within 10 years as provided for in Cl.(2) of S.2 restriction on the institution of suit as provided for in S.20 Cl.(1) quoted above will not be applicable and it is thus clear that during the pendency of the litigation even if 10 years expired the restriction will not be attracted as the suit has been instituted within 10 years

and therefore restriction as provided for in S. 20 cannot be attached.”

14. In view of the above settled proposition of law, the argument of learned counsel for the appellant that the judgment and decree passed in this case has become redundant and inexecutable because of the application of provisions of Rent Act w.e.f. 01.04.2005, has no substance and are rejected. No other point has been argued by learned counsel for the appellant on merit of the case.

15. No substantial question of law requiring determination arises in both these appeals, which have no merit.

16. Dismissed.

17. Photocopy of this judgment be placed on the record of other connected appeal bearing RSA NO.3787 OF 2009.

6th February, 2015
‘raj’

(SURINDER GUPTA)
JUDGE