

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

**RSA No.1644 of 2011(O&M)
Date of Decision: 23.04.2015**

Hazari

... Appellant

Versus

Vinod Kumar (now deceased) through LRs & others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Parveen Hans, Advocate,
for the appellant.

None for the respondents.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

This is an appeal by the tenant against the concurrent decrees of ejectment from the suit property.

Admittedly, the Haryana Urban Control of (Rent & Eviction) Act, 1973 is not attracted to the disputed property and therefore, statutory rent protections are not available to the tenant while the landlord remains within his right to seek possession of the corpus by way of ejectment by a suit filed under Section 9 of the Code of Civil Procedure, 1908. After notice under Section 106 of the Transfer of Property Act is issued and duly served to the tenant, no further evidence is required in a civil suit of this kind except to show that rent law insulation is not available and the quit notice has been served on the tenant and when this happens then the civil court loses jurisdiction to enter upon any defence plea to save a tenant from eviction. In absence of statutory protections, it is well settled that institution of a suit by itself acts as a notice to quit premises let out and law

does not even strictly require a notice under Section 106 of the Transfer of Property Act to initiate a suit. Nevertheless, the learned counsel for the appellant seeks to rely on a decision of this Court handed down in **Anil Kumar v. Amra Ram**, 1984 PLJ 133, to urge that Tosham in District Bhiwani has been held to fall within the definition of “town” and not a “village” and being a town, the tenant can be assumed to have impliedly applied under Rent Control Act. The argument is misconceived since the Court considered the definition of the term 'town' in the light of Punjab Pre-emption Act, 1913 but not rent legislation. The Constitution Bench of the Supreme Court in **Atma Prakash v. State of Haryana**, AIR 1986 SC 859 considered the said Act and observed that “the right of pre-emption based on consanguinity is a relic of the feudal past. It is totally inconsistent with modern ideas. The reasons which justified its recognition quarter of a century ago, namely, the preservation of the integrity of rural society, the unity of family life and the agnatic theory of succession are today irrelevant”. The Court declared Clauses First, Secondly and Thirdly of Section 15(1)(a), 15(1)(b) and 15(1)(c) and the whole of Section 15(2) of the Punjab Pre-emption Act, 1913 as ultra vires the Constitution. Thus, the case in re: *Anil Kumar* is distinguishable on facts and law and is of no help to the appellant.

Learned counsel next relies on **Fakir Chand v. Bhagwan Dass**, 1994 HRR 472, where the question arose when Court disbelieved the landlord with respect to rate of rent, when one of the pleas for eviction was non-payment of rent then rate of rent became material consideration. The matter arose from proceedings before the Rent Controller where statutory protections were available to tenant and in these circumstances, the view

taken was that the landlord must approach the court with clean hands. When court disbelieved rate of rent not clearly specified in the plaint and on which the tenant asserted in his written statement that the rent stood paid up to date then it was for the landlord to prove his case by leading corroborative evidence. The Court was confronted with a case where the landlord sat back for a period of three years without making an issue of non-payment of rent and this was how the Court dealt with the question of insistence of parties approaching the Court with clean hands. This judgment is also of no help to the appellant.

Similar is the view taken in **Mehar Singh v. Tilak Raj**, 1981 (2) RCR 657, which is a case arising out of the East Punjab Urban Rent Restriction Act, 1949 and eviction petition filed under Section 13(2) (i) therein. Similar views have been expressed in **Harnam Singh v. Mohinder Singh**, 1997 HRR 377 on the issue of conduct in concealing facts and parties approaching the Court with unclean hands. Learned counsel also relies on **Parkash Wati v. R.L. Kapur**, 1996 HRR 93. In this case, the rent control authorities and the High Court found the petitioner guilty of forgery and fabrication of documents and thus, observed that equity courts refrain from exercising discretion in favour of such a person. This is also a matter arising out of the order of the Rent Controller at Delhi. Similar is the view taken in the decision of this Court in **Joginder Singh Sawhney v. Harbans Lal**, 2003 HRR 291.

I am afraid, these cases cannot come to the rescue of the tenant/appellant in the present appeal. However, insofar as mesne profits are concerned which are also part of the pending execution proceedings together with question of regaining possession of the suit corpus then my

view is that that would not hold back the execution proceedings on the ground of dispute raised with respect to the rate of rent since mesne profits has effectively nothing to do with the right to regain possession by ejectment. The appellant is faced in execution proceedings concurrent decrees of ejectment. No other ground is pressed. Merely because the District Judge has taken a view in another case contrary to the one as the present one will not persuade this Court to accept that view since the Court of the learned District Judge is not a Court of record. It is the final court of fact but not of law. Consequently, no question of law, much less a substantial one arises in this appeal warranting interference in the dispensations of the Courts below. The appeal is found devoid of merit and is accordingly dismissed in limine.

23.4.2015
monika

(RAJIV NARAIN RAINA)
JUDGE