

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

148

Civil Revision No.5939 of 2016 (O&M)

Date of Decision: September 14, 2016

Kamlesh and others

...Petitioners

Versus

Smt. Vijay Laxmi

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Pankaj Mehta, Advocate
for the applicants-petitioners.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.18302-CII of 2016

Prayer in this application is for condonation of delay of 51 days
in re-filing the petition.

For the reasons mentioned in the application which is duly
supported by the affidavit of the counsel, the present application is allowed

Delay of 51 days in re-filing the petition stands condoned.

CM No.18303-CII of 2016

Prayer in this application is for exemption from filing the typed
copies of Annexures.

Application is allowed.

Exemption from filing the typed copies of Annexures is
granted subject to just exceptions.

CR No.5939 of 2016

Challenge in this revision petition is to the order
dated 18.12.2014 passed by the Rent Controller, Hisar, whereby an eviction
petition preferred by the respondent-landlady has been allowed ordering

eviction of the petitioners from the demised premises on the ground of non-payment of rent and that the petitioners-tenants were not residing in the same and has ceased to occupy the demised premises. The appeal preferred by the petitioners has been dismissed by the Appellate Authority, Hisar, by judgment dated 06.04.2016.

2. It is the contention of learned counsel for the petitioners that the findings, as has been recorded by the Courts below, cannot sustain, especially in the light of the fact that the relationship of landlord and tenant is denied. He contends that apart from this, the finding that the petitioners are not residing in the demised premises, is also incorrect. Similar is the position with regard to the finding with regard to dilapidated condition of the demised premises. Assertion has also been made that the dismissal of the application for additional evidence as filed by the petitioners before the Appellate Authority also cannot sustain as it is only a judgment between the parties which has been rendered by the Additional District and Sessions Judge, Hisar, in Civil Appeal No.110 of 2008 preferred by the petitioner-Ram Singh against the respondents, where an injunction suit was filed against the respondents as also Dakshin Haryana Bijli Vitran Nigam, where the appeal was allowed and the suit as preferred by the petitioner was decreed. He, therefore, contends that the impugned orders passed by the Courts below cannot sustain and deserve to be set aside.

3. Notice of motion.

4. Mr. Narender Kaajla, Advocate, accepts notice on behalf of the caveator-respondent.

5. Caveat discharged.

6. It is the contention of learned counsel for the respondent that the judgments, as has been passed by the Courts below, are based upon proper appreciation of the pleadings and the evidence brought on record. The contention that there is no relationship of landlord and tenant cannot be sustained as there are categoric documentary evidence in the form of certified copy of the pleadings and the orders passed by the Rent Controller, wherein relationship of landlord and tenant between the parties stands admitted in the earlier proceedings. Further he contends that as regards the Dakshin Haryana Bijli Vitran Nigam is concerned, suffice it to say that mere attachment of the property would not make any difference as the petitioners would not cease to be the owners of the demised premises and, therefore, are entitled to the rent for the premises which is admittedly taken by the petitioners from the respondents. The finding with regard to the dilapidated condition of the demised premises and, therefore, unfit for human habitation is also well reasoned and do no call for interference.

7. I have considered the submissions made by learned counsel for the parties and with their able assistance, have gone through the impugned orders.

8. Firstly the relationship of landlord and tenant which is raised by the counsel for the petitioners, the same cannot be disputed in the light of the evidence which has been brought on record which is in the form of certified copies of the pleadings and the orders Exhibits P-3 to P-17, Exhibits P-19 to P-22 and Exhibits P-24 to P-30 which clearly establish the relationship of the landlord and tenant between the parties. These are the documents which clearly show the relationship of landlord and tenant as in

these documents is the rent note dated 14.03.1989 which was executed between the husband of the respondent and the petitioners herein. In these circumstances, it cannot be said the respondent is not entitled to recover the rent for the demised premises which as per the findings recorded by the Courts below, clearly establish the non-payment of rent.

9. Relationship of landlord and tenant having been established and it being an admitted position between the parties that there was a charge raised by Dakshin Haryana Bijli Vitran Nigam over the property in dispute but the respondent continues to be the owner of the property. In the light of the fact that the respondent continues to be the owner of the demised premises and especially in the light of the fact that she is the landlady of the petitioners, the said attachment would not make any difference as far as the present petition is concerned as here only eviction has been sought of the petitioner, who is a tenant of the respondent.

10. Apart from this ground, the evidence which has been brought on record, clearly showing that the premises is being not used by the petitioners for the last three years and thus they have ceased to occupy the same and the findings on this count also cannot be faulted with as there is no evidence led by the petitioners to the contrary.

11. The assertion of the counsel for the petitioners that the judgment on which reliance has been placed by the petitioner and was being sought to be produced as an additional evidence before the Appellate Authority, even if taken into consideration, would not make much of a difference as the said judgment only restrains the respondent herein and Dakshin Haryana Bijli Vitran Nigam from interfering in the possession of

the petitioner from the tenanted portion except in due course of law. The respondent having proceeded to file an eviction petition under the Rent Act, cannot be said to have violated the said judgment in any manner. In any case, the dismissal of the application for additional evidence by the Appellate Authority, is based upon proper appreciation of the pleadings and the provisions as contained in the Code of Civil Procedure, especially relying upon the judgment of the Supreme Court in *Malayalam Plantations Limited Versus State of Kerala and another* 2011(3) RCR (Civil) 609. The principles, as has been laid down, have been properly appreciated by the Court below and has then proceeded to dismiss the application and rightly so.

12. In view of the above, finding no merit in the present revision petition, the same stands dismissed.

13. In the light of the dismissal of the main appeal, the application for stay i.e. CM No.18304-CII of 2016, stands disposed of as infructuous.

September 14, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No