

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 6601 of 2012 (O&M)

Date of Decision: 09.02.2016

Diwan Chand and Others

... Petitioner(s)

Versus

Atul Bhatnagar and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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| 1. | Whether reporters of local newspapers may be allowed to see judgment? | Yes |
| 2 | To be referred to reporters or not? | |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

Present: Ms. Kamalpreet, Advocate
for the petitioner(s).

Mr. Vivek Suri, Advocate
for the respondent(s).

Shekher Dhawan, J.

Present petition is against judgment of Courts below, whereby suit filed under Section 6 of the Specific Relief Act, 1963 for recovery of possession of godown, was dismissed by learned Civil Judge (Junior Division), Panchkula and the appeal filed by plaintiff/petitioner was dismissed by the First Appellate Authority on the ground of maintainability.

For the sake of convenience, parties are being referred to as per their status before the Court of first Instance. Relevant facts of

the case that plaintiffs were tenants in one room godown being part of House No. 836 situated at Parade Mohalla, Kalka. The same was let out by Chameli Devi, grand mother of defendants No.1 to 3, 8 and mother-in-law of defendant No.7 to father of the plaintiffs on payment of ₹ 10/- as rent and the same was later on enhanced to ₹ 13/- per month and rent was further enhanced to ₹ 25/- per month. Earlier, eviction petition was filed against plaintiffs under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 and the same was dismissed vide judgment dated 21.1.1994. After the death of Madan Lal, defendants inherited the house in question and became its landlords. Satya Devi, widow of Madan Lal, used to receive rent from the plaintiffs at the rate of ₹ 25/- per month and she was not issuing any receipt. But plaintiffs continued to make payment of rent. The tenanted property was being used for storage of fruits, cold drinks and milk etc.

As per plaintiffs, on 22.9.2001 at about 10.00 p.m., Manohar Lal kept food and other articles in godown and on 22.9.2001 at about 10.30 a.m., when he visited the said godown, defendants along with some persons broke open the lock thereof and threw away the crates of fruits, milk, fruit bags, second hand tyres and scrap etc. which were lying in the godown and plaintiffs were dispossessed forcibly. The matter was reported to the police on 22.9.2001 itself but the police did not take any action. Defendants and other accused persons had taken away the goods in tractor trolley No. HR-49-3608 and Taxi No. HR-37-0670. Defendants did not allow the petitioners to

come near to the spot and take photographs. They sent telegram to the Home Minister, New Delhi in that regard. Plaintiffs had been dispossessed by the defendants from the godown forcibly and as such present suit.

Defendants contested the suit taking the plea that suit is not maintainable. More so, earlier, one room was given on rent by grand mother of defendants No.1 to 3 to Gian Chand and after the decision of the ejectment petition, plaintiffs themselves surrendered the tenancy of the room in favour of father of defendants No.1 to 3. After the death of Madan Lal on 14.3.2000, defendants No.1 to 3 and 7 came in possession of the said room. Plaintiffs wrongly and malafidely arrayed daughters of Madan Lal and his son-in-law as parties to the suit. Plaintiffs, in connivance with the police, got registered false case against defendants No.1 to 3 and also filed a false complaint against the entire family. They prayed that suit be dismissed.

On these facts, issues were framed by the Court below and the parties were asked to lead their respective evidence. The Court of first instance, after appreciating the entire evidence, returned the findings that plaintiffs have not been able to prove that they were in legal possession of the suit property as tenant in the year 2001 and as they were in illegal possession, so there is no question of their forcible dispossession on 22.9.2001 and dismissed the suit.

Appeal filed before the District Judge, Panchkula was dismissed vide judgment dated 17.8.2012 on the ground of maintainability and as such present appeal.

Learned counsel for the petitioners mainly took the plea that admittedly Gian Chand was tenant in the godown in the year 1995. Thereafter, plaintiffs were dispossessed from the tenanted premises on 22.9.2001 and the articles of the petitioners lying in the godown were thrown away. There was no compromise at any stage whereby possession was delivered to the respondents. The Court below completely ignored the fact that house tax register for the year 1998-99 shows that possession of the godown was with the petitioners. The said entries were recorded in the house tax register after physical verification by the staff members. As petitioners were dispossessed from the tenanted property forcibly, the matter was reported to the police on the same very day i.e. 22.9.2001. Petitioners had suffered huge financial loss by way of dispossession and loss of food articles which were thrown out of the godown but even no compensation has been awarded.

Learned counsel for the petitioners also submitted that on 29.5.2010, the Court of Civil Judge (Junior Division), Panchkula dismissed the suit of petitioners and under wrong impression, appeal was filed against the said judgment before the Court of District Judge, Panchkula on 31.7.2010 and the said appeal was dismissed on 17.8.2012 on the ground of maintainability and thereafter, present petition before this Court. As such there was no delay in filing the petition before this Court.

Learned counsel for the respondents, while arguing on these points, submitted that the Court of first instance has already dealt

with all these issues and returned the findings that petitioners were not in possession of the suit property on 22.9.2001. In fact, petitioners were required to prove that they were in possession of the godown in question on 22.9.2001. But petitioners failed to prove the same. In fact, petitioners had also surrendered the possession and this fact was found recorded in the official record and the Court of first instance recorded findings of facts on that basis. Learned counsel for the respondents referred to statement of DW.2-Balwant Singh, Clerk, Municipal Committee, Kalka, which was relied upon by the Court of first instance. Learned counsel for the respondents also took the plea that primarily it was the legal duty casted upon the petitioners to prove that in fact on 22.9.2001, they were in possession of the godown in question but that has not been proved and as such there was no question of dispossession.

Learned counsel for the respondents also submitted that in such like cases where revision is to be filed but appeal having been filed before the District Judge having no jurisdiction to entertain the matter, delay in filing the appeal cannot be condoned. On this point, reliance was placed upon the judgment rendered by Hon'ble the Supreme Court in case ***Ramji Pandey and Others v. Swaran Kali*** **2011 AIR (SC) 489.**

Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that the Court of first instance has already appreciated the entire evidence which consisted of statements of the parties and the official witnesses

examined in the case. The onus was lawfully upon the petitioners to prove that they were in possession of the godown as tenanted premises till 22.9.2001. But petitioners have not been able to prove the said fact and findings of facts have been recorded on this point by the Court below.

On this point, statement of DW.2-Balwant Singh, Clerk, Municipal Committee, Kalka is most relevant, who was summoned along with official house tax assessment register and deposed that in the assessment register for the year 2001, house No. 836 was in the name of Madan Lal son of Ramji Dass. House tax receipts Ex.D4 & Ex.D5 and bill Ex.D6 were issued by their office. However, the said documents Ex.D4 to Ex.D6 are only for the purpose of house tax collection and on the basis of same, it could not be ascertained that who was actually occupying the property in question. More so, in the column of possession, the same has been shown to be vacant in the house tax register.

To establish the tenancy of the petitioners till 22.9.2001 and their possession till then, petitioners were required to prove that they were continuing to be tenants and for that purpose they had been making payment of any rent amount. Petitioners failed to produce any receipt showing payment of rent till 22.9.2001. Merely registration of FIR on 22.9.2001 no way established that petitioners were in possession of the suit property as tenant on 22.9.2001. Hence, present petition is without any merit. More so, the Court of first instance decided the matter on 29.5.2010 and thereafter no revision was filed. Rather appeal

was preferred before the Court of District Judge, Panchkula which was legally not maintainable. Petitioners have sought condonation of delay in filing the present petition on that ground. However, as per the view taken by Hon'ble the Supreme Court in case ***Ramji Pandey and Others v. Swaran Kali*** (*supra*), petitioners are not entitled to condonation of delay in such like pleas.

In view of above, present petition is devoid of any merit and the same stands dismissed.

(Shekher Dhawan)
Judge

February 9, 2016

"DK"