

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

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Civil Revision No.7003 of 2016

Date of Decision: November 29, 2016

Dilwar Khan

...Petitioner

Versus

Ravinder Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Arihant Jain, Advocate
for the petitioner.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court impugning the order dated 19.03.2016 passed by the Rent Controller, Malerkotla, whereby the objections preferred by the petitioner in the execution proceedings, have been dismissed, appeal against which preferred by the petitioner has also been dismissed by the Additional District Judge, Sangrur, on 14.09.2016.

2. It is the contention of learned counsel for the petitioner that the father of the petitioner was impleaded as respondent No.3 in the eviction petition which was preferred by respondent No.1-Ravinder Kumar but was proceeded against *ex parte*. Issues were framed on 15.06.2007, wherein there was no issue with regard to subletting of the demised premises, however, on 27.01.2012, fresh issues were framed in which one of the issues which was framed was 'whether tenants-Luxmi Devi and Devi-respondents 1 and 2 in the eviction petition have sublet the shop in dispute to respondent No.3', father of the petitioner. Both the counsel for the parties, after the framing of the said issue, made a joint statement that they did not want to lead any fresh evidence after reframing of the issues and the earlier evidence led by the parties be read at the stage. This joint statement

was recorded on the date on which the subsequent issues were framed i.e. 27.01.2012. He contends that this clearly shows and depicts the connivance between the landlord and the erstwhile tenants against whom the decree of eviction has been passed. He contends that notice should have been issued at that stage to the father of the petitioner namely Khushi Mohd. which was not done by the Rent Controller in the eviction petition. He contends that the Courts below without appreciating and considering the true facts have rejected the objections merely on the ground that the predecessor-in-interest of the petitioner was a party to the eviction petition. Prayer has thus been made for setting aside the impugned order.

3. I have considered the submissions made by learned counsel for the petitioner and with his able assistance, have gone through the impugned orders but do not find myself in agreement with his submissions.

4. As per the eviction order which has been passed against the respondents in the eviction petition, the plea of respondent No.1, the landlord with regard to subletting of the demised premises, has not been accepted which clearly shows that there was no subletting of the demised premises and the premises were in the hands of tenants namely Luxmi Devi and her daughter Devi. That apart, since the predecessor-in-interest of the petitioner namely Shri Khushi Mohd. was a party to the eviction petition and had been duly served and having chosen not to appear before the Court and contest the claim of eviction, the connivance, if any, would be of the predecessor-in-interest of the petitioner and respondents 2 and 3, the tenants. Not only this, when an order of eviction was passed by the Rent Controller, no appeal has been preferred by the predecessor-in-interest of the petitioner. It is an admitted fact that

Khushi Mohd. died during the pendency of the appeal and, therefore, the eviction order was passed when he was alive. No steps were taken by Khushi Mohd. to join the proceedings at any stage during his lifetime before the Rent Controller and thereafter during the pendency of the appeal, even the petitioner also did not take any steps.

5. As regards the argument of the counsel for the petitioner that issues which were subsequently framed on 27.01.2012 which included the issue of subletting of the shop to the predecessor-in-interest of the petitioner required issuance of notice at that stage, suffice it to say that Khushi Mohd. was a party to the petition where he had been proceeded against *ex parte* and had never chosen to appear before the Court. Once he has been proceeded against *ex parte* in the said proceedings, he could have joined the same at any stage but he chose not to do so, further there is no mandate of law to issue notice after the reframing of the issues to the parties to the proceedings.

6. As regards the contention of counsel for the petitioner that there is connivance between respondent No.1-landlord and respondents 2 and 3, the tenants, suffice it to say that had it been so, no appeal would have been preferred by respondents 2 and 3 against the order of eviction passed by the Rent Controller, rather only respondent No.2 filed the appeal which was dismissed by the Appellate Court and thereafter a Civil Revision No.1509 of 2015 was also preferred by respondent No.2-Luxmi Devi which was disposed of by this Court by order dated 01.05.2015 granting her time to hand over the vacant possession of the demised premises and to deposit future monthly rent by

11th of each month. The vacant possession was to be handed over on or before 01.11.2015. As the facts unfurl, it appears that there is no connivance between respondent No.1, the landlord and respondents 2 and 3, the tenants, rather it is the other way around where respondents 2 and 3 have inducted the petitioner in the demised premises to evade compliance of the order dated 01.05.2015 passed by this Court.

7. The orders impugned as passed by the Courts below being based on proper appreciation of the pleadings and law, do not call for interference by this Court.

8. Finding no merit in the present revision petition, the same stands dismissed.

November 29, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No