

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 1592 of 2017 (O&M)

Date of decision: 06.03.2017

Yashpal Bagga

... Petitioner

versus

Mandir Baba Yashrath Rai (Regd.)

.... Respondent

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA

Present: Mr. Varun Sharma, Advocate
for the petitioner.

G.S. SANDHAWALIA, J. (ORAL)

The present revision petition filed under Section 13 of East Punjab Urban Rent Restriction Act, 1949 is directed against the order of Rent Controller, Jalandhar dated 16.01.2015 whereby eviction has been ordered on the ground of non-payment of rent and an opportunity to tender the same has also been denied on the ground of the fact that the relationship inter se was denied as such. The order has been upheld in appeal on 07.01.2017 and the Appellate Authority has placed reliance upon the judgments of this court in **Yashpal Singla Vs. Vijay Kumar 2004 (1) RCR (Rent) 718, Jagdamba Tea Factory, Amritsar and others Vs. Parshotam Kishan 2008 (3) RCR (Civil) 17, Sandeep Shahi Vs. Smt. Asha Rani 2011 (1) RCR (Civil) 103** to the extent that if the relationship is denied and at the final stage the court comes to the conclusion that it was denied wrongly, eviction follows and no opportunity is to be given to make good the deficiency in arrears of

rent.

The eviction petition was filed by the respondent/landlord for ejectment of the petitioner/tenant from portion at the ground floor, first floor and second floor of the property bearing No. N.F. 116 situated at Mohalla Thapran, Jalandhar as shown in the site plan (Ex.P2) are as per the boundaries given in the heading of the petition. The case of the respondent/landlord was that the property was purchased vide two sale deeds dated 25.11.1999 and 13.12.2005. Thereafter, the landlord-trust was created by Chand Rani and Prem Chand Thapar vide registered deed dated 16.12.2005 and the properties were bequeathed to the trust. Eviction was sought on the grounds of arrears of rent since 01.10.2006 at the rate of Rs. 500/- per month and that the property had become unfit and unsafe for human habitation. Interior alterations had been made in the property without the consent of the landlord is another ground made for eviction apart from the nuisance created by the tenant which is hurting the religious sentiments of the followers. A complaint had also been filed under Section 145 of Cr.P.C. apart from another ejectment petition.

In the reply filed, petitioner-tenant stated that respondent-landlord was neither the owner of the property nor the landlord receiving the rent. The father of petitioner-tenant was paying Rs. 13/- per month for the complete portion since year 1967 to one Ram Murti Mahindru and similarly after the death of the father of the petitioner-

tenant, he was also paying rent to the said landlord. The respondent-landlord was an Advocate and with the intention to get the rented portion vacated has filed the false and fabricated case against the petitioner-tenant. The following issues were framed by the Rent Controller:

1. *Whether there exist relationship between the parties as landlord and tenant? OPP.*
2. *Whether respondents are in the arrears of rent at the rate of Rs. 500/- per month w.e.f. 01.10.2006, if so its effect? OPP.*
3. *Whether property in question is unsafe and unfit for human habitation and is in dilapidated condition ? OPP.*
4. *Whether respondent is guilty of making addition and alteration in the property in dispute and change the nature without the consent of the petitioner, if so its effect?*
5. *Whether respondent has become a source of nuisance for the petitioner, if so its effect ? OPP.*
6. *Whether present petition is not maintainable in the present form? OPR.*
7. *Whether petitioner has no locus standi to file the present suit ? OPR.*
8. *Relief.*

The respondent/landlord examined Sandeep Thapar,

Authorized representative whereas petitioner-tenant himself stepped into the witness box as RW-1 and also examined RW2 Ashok Kumar. Nothing has also been brought on record that the amount was being paid to Ram Murti Mahindru. Jasbir Singh-RW3 was also produced to show that the electric connection was in the name of the petitioner/tenant. Keeping in view the fact that the relationship as such has been denied, the Rent Controller took into account the stand of the tenant in the reply filed in the court of the SDM (Ex.P6) in the complaint filed under Section 145 Cr.P.C.

In the same, it was specifically averred that the father of the present petitioner was in possession of the property being a tenant since 1967. Thus, it is apparent that the status of the present petitioner being the son of Sham Lal Bagga was of a tenant in the premises in question. Mere payment of rent to Ram Murti Mahendru who was never examined was rightly held to be of no value. It is not disputed that the sale deeds are in favour as such of the respondent also. Resultantly, the amount was also found due as arrears of rent from 01.10.2006. No evidence was produced by the respondent-landlord and therefore issue No.3 regarding the building being unfit and unsafe was decided in favour of the tenant. Similarly issue No. 6 regarding the maintainability of the petition was decided against the present-petitioner and it was held that the landlord had locus standi to file the petition under issue No.7 while passing the judgment.

Counsel for the petitioner has submitted that the opportunity of payment of rent should be given inspite of the fact that relationship as such has been denied. The position stands settled keeping in view the judgment passed by the **Apex Court in Rakesh Wadhwa and others Vs. M/s Jagdamba Industrial Corporation and others 2002 (1) RCR (Rent) 514** and that on account once the stand is taken by the tenant that the relationship is denied, then he cannot be given an opportunity to pay the rent at a later stage and deny the payment during the pendency of the proceedings. Reference can be made to '**Hukma Devi Vs. Bhagwan Dass' 2003 (2) PLR 371** and other judgments which have been referred to by the Appellate Court. Thus, there is no procedural infirmity in the orders passed by the Courts below.

In the said judgment it was held that where there is a complete denial of relationship of landlord and tenant, then the Rent Controller would not be under an obligation to pass an interim order assessing the rent, interest and cost of application. It was also held that an unscrupulous tenant, thus, cannot be permitted to take the stand that he should be permitted to deposit the arrears and, thus, would successfully delay the payment of rent.

The said view was followed in '**Yashpal Singla Vs. Vijay Kumar' 2004 (3) PLR 504**, and thereafter, in '**Jagdish Singh Vs. Mohan Lal 2004 (3) PLR 78**, keeping in mind the judgment of the Apex Court in '**Vijay Kumar Vs. Prem Lata' 2003 (11) SCC 397**. The

entitlement of a tenant to be given an opportunity to tender arrears of rent on account of denial of relationship of landlord and tenant was rejected. The said view was, thereafter, followed in *Sandeep Shahi (supra)*. Thus, keeping in view the above discussion, no fault can be found in the reasoning of the Courts below. The revision petition is accordingly dismissed.

Counsel at this stage has requested that the petitioner is in possession since the year 1967 and it will take time to relocate and he be entitled to stay till 30.09.2017 subject to the condition that he clears all the arrears of rent and gives an undertaking before the Rent Controller within four weeks from today that he would vacate and hand over the vacant possession of the demised premises to the respondent/landlord. The same request is accordingly allowed. It is made clear that if the same is not done within the period prescribed or the same is flouted, the protection shall be liable to be vacated and the Rent Controller will ensure that possession be handed over immediately with the help of the police, if so required.

(G.S. SANDHAWALIA)
JUDGE

06.03.2017

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Whether speaking/non-speaking	:	Yes/No
Whether reportable	:	Yes/No