

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

206

CR No.2102 of 2014
Decided on : 22.02.2017

Inder Singh

... Petitioner

Versus

Mohan Singh

.. Respondent

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

Present : Mr.H.S.Batth, Advocate
for the petitioner.

G.S.Sandhawalia, J. (Oral)

The present revision petition is directed against the concurrent findings of the courts below whereby the eviction petition has been dismissed by the Rent Controller, Amritsar on 30.10.2012, and duly upheld by the Appellate Authority on 07.11.2013. The eviction was sought on the ground there were arrears of rent w.e.f. 01.08.2005 at the rate of R.1500/-p.m. and that premises are not fit and unsafe, and also that the respondent-tenant has ceased to occupy the premises.

The stand of the respondent was that there was no relationship of landlord -tenant, and Davinder Singh was not the General Power Attorney holder of the petitioner-Inder Singh. One Jaswant Kaur widow of Suba Singh and others were the owner of property, of which demised premises was part. They through the applicant-present petitioner had appointed one Kuldeep Singh son of Hakam Singh as their special attorney to make all arrangements in respect of the property in question

and they had been regularly paying rent upto December 2008.

Counsel for the petitioner has vehemently submitted that he had power of attorney dated 20.11.1991 in his favour and, further he had attorned in favour of Kuldeep Singh on 05.07.1996. The same had been revoked on 05.12.2007, Ex.AW-4/1. The petition had been filed on 16.10.2008 and therefore, he was liable to be paid rent w.e.f. 1.8.2005 which had been claimed on 1.8.2005, and could be legitimately claimed at least after December 2007. The reasoning given to reject the case of the petitioner was that Davinder Singh, the general power of attorney of the present petitioner had appeared as AW-4, and tendered the revocation deed of the Special Power of Attorney of Kuldeep Singh dated 5.12.2007, as AW4/1. Similarly, Mohan Singh had appeared as RW-3, and placed on record the receipts Annexure Exhibits R-1 to R-19, issued by Kuldip Singh to him. It was accordingly held on the basis of such evidence nothing had been placed on record to show that the notice of revocation was ever sent to the tenant. The tenant had paid the rent vide Exhibits R-4 to R-8 from January 2005 to December, 2008. It was, in such circumstances, held that there was no arrears payable, as claimed by the petitioners.

On the other ground which was regarding unfit and unsafe, it was held that apart from the statement of the petitioners witnesses, not a single photograph had been placed on record that the premises have been rendered unfit and unsafe. The site plan did not show what was the status of the construction and none had been examined who had visited the

demised premises to the effect that they are unfit and unsafe. Therefore, the issue was decided against the petitioners. Similarly, on the ground of cease to occupy, keeping in view the fact that the electricity was consumed from 03.05.2008 to 04.11.2008 and the petition was filed on 16.10.2008, it was held that the issue was not proved. The relationship as such of landlord tenant, however, was decided in favour of the petitioners.

The matter was taken up in appeal to the appellate authority who independently applied its mind to the said facts and came to the conclusion that even the Inder Singh, said landlord had not been examined. Therefore, non-examination had materially effect on the case of the petitioners. The alleged receipt dated 10.08.2008, Ex.AW-4/8 whereby payment has been made to the attorney, was rejected on the ground that the said fact had never been pleaded and neither anything had been deposed regarding this aspect. The receipt had been produced on the file when the case was fixed for rebuttal evidence, on a simple paper and not witnessed by any one. Therefore, at the time of filing of the petition, it should have been pleaded and then proved by the petitioners. The credibility therefore is rightly doubted on account of the rent being paid to Kuldeep Singh, and duly proved by the rent receipts. The findings of the Rent Controller were accordingly, sustained.

It is to be noticed that Kuldeep Singh has not been examined and he was the best witness to support the fact whether the rent had been received or not. It is also to be noticed that Davinder Singh, attorney was

appointed two days prior to the revocation of the power of attorney on 05.12.2007, and accordingly, the receipt Exhibits R-1 to R-19 were examined to see that they were on a printed proforma that could not have been prepared falsely. Resultantly, payment having been made to the attorney as such, was held in favour of the tenant. On the issue of unfit and unsafe, once no expert had been examined by the petitioners, the oral evidence as such could not be accepted. Therefore, no ground was available as such, and the finding on issue No.2 have been upheld properly. Similar view was given regarding ceased to occupy, which cannot be faulted as only oral evidence has been produced whereas on the contrary, actual bills i.e. Annexures R-20 to 21, that the electricity had been consumed w.e.f. August to November, 2008, prior to the filing of the petition, went on to show that there was no ceasing to occupy.

The findings thus, which have been recorded on the basis of which the ejectment application has been dismissed, are very well justified. In the absence of any expert, nothing could be argued by the counsel for the petitioner that the oral evidence as such, to be accepted, as to the age of the building and the condition which cannot be ascertained by the court, which could not come to the finding on its own that the building was unsafe and unfit. Similarly, sufficient material has been placed on record to show that electricity had been consumed to show that the premises were in occupation. The tenant having paid the rent to the earlier attorney who was duly competent, could not be asked to pay the amount again as he was never informed of the cancellation of the

attorney.

It will thus, always open for the petitioners to recover the amount paid to Kuldeep Singh. Accordingly, the reasoning given by the courts below are duly upheld and the present revision petition is dismissed.

[G.S.Sandhawalia]
Judge

22.02.2017
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Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No