

111.

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

Civil Revision-2571-2017 (O&M)

Date of decision: 09.05.2017

TILAK RAJ JAIN

... Petitioner

VS

RAKESH KUMAR DUGGAL AND ANR

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Siddharth Gupta, Advocate,
for the petitioner.

HARI PAL VERMA, J.

Petitioner-Tilak Raj Jain, a tenant, has filed the present revision petition under Article 227 of the Constitution of India for setting aside impugned order dated 09.03.2017 (Annexure P-4) passed by the Rent Controller, Chandigarh, whereby his application filed under Order 1 Rule 10 CPC, seeking impleadment of Roopa daughter of Shri K.N. Malhotra, was dismissed.

Briefly stated, respondent No.1-Rakesh Kumar Duggal had filed a rent petition against the tenants i.e. Tilak Raj Jain (petitioner herein) and Darshan Lal (respondent No.2 herein), under Section 13 of East Punjab Urban Rent Restriction Act, seeking their eviction from the premises i.e. Bay Shop No.11, M.W. Industrial Area, Phase-I, Chandigarh. As per the rent petition, the said Bay shop was owned and possessed by K.N. Malhotra and after his death in the year, 1992, his wife, namely, Bimla Malhotra became the owner of the demised

premises along with her daughter, namely, Roopa, through natural succession. The duo i.e. Bimla Malhotra and Roopa entered into an agreement to sell dated 12.07.2004 with regard to demised premises with respondent No.1, for a total sale consideration of ₹18 lakhs and out of which, ₹2,70,000/- was paid as earnest money (i.e. ₹2 lakh in cash and ₹70,000/- through two different cheques of ₹35,000/- each, dated 12.07.2004 drawn on State Bank of Patiala, Sector 22, Chandigarh).

On 28.10.2005, Bimla Malhotra also expired and consequently, Roopa being legal heir of K.N. Malhotra (deceased), became the owner/landlord of the suit property.

In order to get the said agreement dated 12.07.2004 enforced, respondent No.1-Rakesh Kumar Duggal had filed a suit for specific performance, permanent injunction and recovery, against Roopa (i.e. defendant in civil suit). However, vide judgment and decree dated 06.11.2013, the trial Court partly decreed the said suit with costs in favour of respondent No.1 and he was held entitled to possession by way of specific performance of agreement to sell dated 12.07.2004 and Roopa was directed to execute the sale deed in favour of Rakesh Kumar Duggal-respondent No.1 within three months from the date of said judgment and the defendant-Roopa was restrained from selling, alienating or transferring the suit property to any person in any manner except the plaintiff-respondent No.1-Rakesh Kumar Duggal. The relief qua recovery of ₹70,000/- was dismissed.

However, against the said judgment and decree dated 06.11.2013, Roopa has also filed an appeal before the Lower Appellate Court, which is fixed for hearing on 22.05.2017.

Pending rent petition, the petitioner-tenant-Tilak Raj Jain moved an application under Order 1 Rule 10 CPC for impleading Ms. Roopa daughter of K.N. Malhotra, as a necessary party. However, the said application was dismissed by the Rent Controller vide order dated 09.03.2017. It is that very order which the petitioner-tenant is impugning through the present revision petition.

Learned counsel for the petitioner has argued that the petitioner is a tenant even before the execution of the agreement to sell dated 12.07.2004 between the parties. He is a tenant before the year 1992. It is on 02.02.1992 when K.N. Malhotra died and Bimla Malhotra and Roopa succeeded the demised property i.e. Bay Shop. On 12.07.2004, an agreement to sell with regard to the demised property was entered between Bimla Malhotra and Roopa with respondent No.1-Rakesh Kumar Duggal. On the basis of said agreement, respondent No.1 filed a suit for specific performance, which was decreed in favour of respondent No.1 and against Roopa, vide judgment and decree dated 06.11.2013. However, Roopa has also filed an appeal against the said judgment dated 06.11.2013 before the Lower Appellate Court which is pending for 22.05.2017. It is during the pendency of the civil suit, respondent No.1-Rakesh Kumar Duggal filed a rent petition against the petitioner and respondent No.2 for

eviction from the demised premises. Since the appeal against of the judgment and decree dated 06.11.2013 is pending before the Lower Appellate Court, it is yet to establish whether respondent No.1-Rakesh Kumar Duggal is absolute owner of the property or not. Therefore, the petitioner had moved an application under Order 1 Rule 10 CPC, so as to implead Roopa as a necessary party, but the said application was dismissed by the Rent Controller primarily on the ground that the Rent Controller has no authority to decide the ownership rights and it is the duty of the petitioner to prove/establish relationship of landlord and tenant. He has further argued that the Rent Controller has further committed illegality while holding that it is not for the tenant to tell the court that the petitioner is not the landlord of the demised premises. Further, if the appeal filed by Roopa is allowed by the Lower Appellate Court, then the whole proceedings initiated in the rent petition would be an exercise in futility and if the eviction order is passed by the Rent Controller, then the petitioner would suffer an irreparable loss which cannot be compensated.

I have heard learned counsel for the petitioner.

Admittedly, an agreement to sell dated 12.07.2004 was executed between respondent No.1-Rakesh Kumar Duggal with Bimla Malhotra and Roopa. K.N. Malhotra was the original owner/landlord of the demised premises and after his death on 02.02.1992, his wife-Bimla Malhotra and daughter-Roopa became the absolute owners of the demised shop. Bimla Malhotra also died on 28.10.2005 and

thereafter, Roopa became the owner/landlord of the property in dispute. In order to get the agreement enforced, he (Rakesh Kumar Duggal) filed a suit for specific performance, permanent injunction and recovery on 09.11.2009 (RBT). Vide judgment and decree dated 06.11.2013, the trial Court had decreed the said suit with costs and the relief of specific performance of the contract was granted in favour of the plaintiff i.e. Rakesh Kumar Duggal-respondent No.1 and against the defendant (in civil suit) i.e. Roopa. Simply because against the judgment and decree dated 06.11.2013, Roopa has filed an appeal before the Lower Appellate Court, which is pending for 22.05.2017, is no ground to allow the petitioner-tenant to implead Roopa as a necessary party in the rent petition. The tenant cannot dictate terms and it is for the Rent Controller to frame an issue and adjudicate the same in accordance with law. It is for the owner to prove relationship with tenant. If Roopa, whom the petitioner-tenant wants to implead as a party, is aggrieved, then she should have appeared for her grievance, but nothing as such has come from Roopa. It shows she is not very interested to join the present proceedings.

In view of above, this Court does not find any illegality in the order dated 09.03.2017 passed by the Rent Controller and accordingly, the revision petition filed by the petitioner-tenant is dismissed in limine.

(HARI PAL VERMA)
JUDGE

09.05.2017