

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No.2616 of 2017 (O&M)

Date of decision: 17.04.2017

Vinod Kumar

....Petitioner

Versus

Atul Bansal

...Respondent

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

Present: Mr.H.P.S.Ghuman, Advocate, for the petitioner.

G.S. SANDHAWALIA, J. (Oral)

The petitioner-tenant challenges the concurrent findings of the Courts below, whereby eviction has been ordered on 27.09.2016 by the Rent Controller, Samana, on the ground of *bona fide* requirement and non-payment of rent, since the relationship of landlord-tenant was denied.

Counsel for the petitioner has vehemently argued that only on the basis of the pedigree table, which had been placed on record by the respondent-landlord, the relationship had been taken to be proved and therefore, the eviction order was not justified. It is further submitted that the *bona fide* requirement is missing as such and even the findings recorded on that aspect by the authorities below were not justified.

A perusal of the paperbook would go on to show that it was the case of the respondent-landlord that his grandfather-Dev Raj Bansal had created a tenancy with Madan Lal, the father of the present petitioner at a monthly rent of Rs.1000/-. After the death of Madan Lal, he was paying the rent till August, 2006, when the grandfather expired. Resultantly, on account of non-payment from the said date, ejectment was sought on the said account along with the fact that the respondent was an Advocate and is practising at Civil Courts, Samana and that he required the premises in

dispute for his personal use and for establishment of his office as Advocate.

The defence of the present petitioner was that the respondent had never become the landlord nor he had paid any rent to him and that an earlier litigation was pending between the relatives of the respondent and other persons regarding the said house and the rate of rent was determined at Rs.22/- per month and rent was being paid to Vinod Kumar son of Dev Raj upto July, 2006 but no rent receipt had been issued by Vinod Kumar. It was admitted that his father had taken the house on rent from Dev Raj Bansal.

The following issues were framed by the Rent Controller:

- “1. Whether there is relationship of landlord and tenant between the respondent and petitioner? OPP
2. If issue No.1 is proved, whether respondent is in arrears of rent towards the petitioner? OPP
3. If issue No.1 is proved, whether petitioner requires the premises for his bonafide personal necessity? OPP
4. Whether the petition is not maintainable in its present form? OPR
5. Whether petitioner has suppressed material facts from the Court? OPR
6. Relief.”

The respondent examined himself as PW1 and 2 more witnesses, namely, Deepak Sharma and Ram Singh Chauhan and also placed on record his Identity Card as an Advocate (Ex.P4) and the fact that he was paying monthly subscription of Rs.1300/- to the Bar Association Samana (Ex.P3). Similarly, the death certificate of his father was placed on record as Ex.P7 and certified copy of vakalatnama

showing that the respondent was practising, as Exs.P8 & P9. The petitioner did not examine anybody else apart from his own side, to dispel the relationship of landlord-tenant.

It is apparent from the discussion of the Rent Controller that the landlord was cross-examined as to whether the other legal heirs' consent had been taken to file the present petition and that the landlord had denied that he had taken any such consent. Resultantly, it was held that the respondent was admitting that the petitioner was one of the LRs of Dev Raj Bansal and accordingly, relied upon the pedigree table, to hold that there was a relationship, as such, of landlord-tenant between the petitioner and the respondent. It is apparent that there is a typographical mistake and it has been mentioned that there does not exist a relation of landlord-tenant, though, from a complete reading of para No.7, whereby reasons have been given, it would be clear that it should have been: 'There does exist a relationship of landlord and tenant'.

It was also noticed that the landlord required the premises as he was a practising Advocate at Nabha and wanted to expand his clientage by starting his practise at Samana and resultantly, keeping in view the principle that the need has to be seen from the angle of the landlord and not from the view point of the tenant, the issue of *bona fide* requirement, under issue No.3, was also decided in favour of the landlord. Resultantly, under the relief clause also, a direction was issued to deposit the arrears of rent which were claimed at Rs.1000/- from August, 2006 to September, 2012 along with interest @ 6% per annum. Thus, it was obvious that there was a typographical mistake in para No.7 and that is

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why such a direction had been issued by the Rent Controller. If it had been held that there was no relationship, as such, such a necessary direction would not have been issued, obviously.

In appeal also, the matter has been decided against the present petitioner by the Appellate Authority, Patiala, on 07.03.2017 and it was noticed that there was a receipt showing that the respondent was a practising Advocate at Civil Court, Samana for the last 2/3 years and he had deposited his membership fee amounting to Rs.1300/- vide receipt dated 07.05.2012. Accordingly, the need was held to be *bona fide*. Keeping in view the fact that an argument was raised that there was no need of assessing the monthly rent since the relationship was denied, it was rightly held that the Trial Court had proceeded and given reasons in favour of the landlord and there existed a relationship of landlord and tenant between the parties. On the question of relationship, as such, of the landlord-tenant, the pleadings as well as the evidence was reappreciated by the Appellate Authority to hold that the respondent was a co-owner of the suit property and no contrary evidence had been led to controvert the pedigree table. In view of the specific cross-examination by the counsel whether the consent had been taken or not, it would be obvious that the relationship, as such, was admitted and therefore, the objection raised that there was no relationship was, accordingly, rejected.

It is not the case of the petitioner that he had an independent title of the premises or that there is any other person who is the landlord, apart from Vinod Kumar son of Dev Raj, whereas the respondent is the grandson of Dev Raj. Specific case was put up and on account of the

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cross-examination which has been conducted, it is apparent that a suggestion was put that the consent of the other legal heirs had not been taken. Therefore, it does not lie in the mouth of the petitioner to say that there was no relationship, as such, proved. It was always open to the respondent to prove that Vinod Kumar was his landlord by producing him or getting him impleaded. Once it was admitted that the father of the petitioner had taken the property on rent from the grandfather of the respondent, it would not lie in his mouth to deny the relationship. In such circumstances, the factual findings which have been recorded by the Courts below do not suffer from any procedural illegality or irregularity which would warrant interference by this Court in the revisional jurisdiction.

It is also not disputed that inspite of a direction having been issued by the Rent Controller that the rent had to be deposited, no such deposit was made and therefore, the petitioner continues to enjoy the premises without payment of rent to the respondent. It is settled principle that once the relationship is denied, the tenant cannot be given an opportunity, as such, to deposit the rent. Reliance can be placed upon **Hukma Devi Vs. Bhagwan Dass 2003 (1) RCR (Rent) 533**, wherein, after placing reliance upon the judgment in **Sheela Vs. Firm Prahlad Rai Prem Prakash 2002 (3) SCC 375**, it was held that where the tenant refuses the liability to pay rent, the question of presumption would not arise at all and a unscrupulous tenant cannot be permitted to take a stand that he is not tenant under the landlord and then claim that he is a tenant and be permitted to deposit the arrears of rent. In **Devinder Singh Puri**

Vs. B.N.Rampal 2004 (2) RCR (Rent) 216 (P&H), this Court has held as under:

“10. It is also well-settled that in cases where the tenant raises dispute with regard to the status of his landlord and alleges that intact the respondent is not his landlord then he would obviously be not required to make any payment of rent. In such circumstances he cannot expect the Rent Controller to first draw a provisional order of assessment and then claim an opportunity to make payment of arrears of rent. In other words, the judgment of the Supreme Court in the case of Rakesh Wadhawan v. Jagdamba Industrial Corporation and Ors. 2002(5) SCC 440, interpreting Section 13(2)(i) of the Act would not be applicable. This Court has taken the afore-mentioned view in the case of Rama Nand Shastri v. Gian Singh 2003(1) R.C.R. (Rent) 734 (P&H). Therefore, the plea which could have been raised on the basis of the judgment of the Supreme Court in Rakesh Wadhawan's case (supra) would not be available to the tenant-petitioner in the instant case.”

This view was followed in ***Jagdish Singh Vs. Mohan Lal 2004 (2) RCR (Rent) 114, Jagdamba Tea Factory, Amritsar Vs. Parshotam Kishan 2008 (3) RCR (Civil) 17*** and ***M/s Gawritex Industries Ltd. Panchkula Vs. Sqn. Ldr. Gurdial Singh (Retd.) & others 2009 (2) RCR (Rent) 213.***

Accordingly, finding no merit in the present revision petition, the same is, hereby, dismissed in limine.

17.04.2017
 Sailesh

(G.S. SANDHAWALIA)
 JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No