

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

**Civil Revision No.3025 of 2013 (O&M)
Decided on : 28.03.2017**

Subhash Chander and another

... Petitioners

Versus

Bhushan Kumar

... Respondent

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

Present : Mr. Anil Kumar Garg, Advocate for the petitioners.

Respondent ex parte.

G.S. Sandhawalia, J. (Oral)

The present revision petition is directed against the order dated 01.09.2011, whereby findings were recorded that he was in arrears of ₹52,267/- by the Rent Controller, Ludhiana which was upheld in appeal by the Appellate Authority on 09.01.2013.

Counsel for the petitioners has vehemently submitted that in another set of proceedings there was an admission by the landlord that his father had expired in the year 2001 and, therefore, the directions as such to deposit the amount, failing which eviction would be ordered is without any basis. It is, accordingly, submitted that the tenant is not liable to pay the amount as assessed.

It is pertinent to notice that the eviction petition as such was filed on 09.04.2010 on the ground of non-payment of rent @ ₹600/- per month from 01.01.1997. In view of the evidence which came on record, the Rent Controller came to the conclusion that there were arrears till

15.06.2005 and adjustment of ₹25,168/- was given and directions were issued to deposit a sum of ₹52,267/- within one month, failing which eviction would be ordered.

It is not disputed that the said amount was deposited. However, the matter was taken in appeal, whereby the amount quantified was sought to be disputed. Reliance has been now placed upon the statement of the landlord made in another set of proceedings on 05.11.2011 (Annexure P-1). Thus, the same cannot be as such used for the benefit by the tenant that the father had received the amount before his death and there was an admission as such.

It is not disputed that the said statement is not part of the present proceedings and could not be pleaded, since it was of the subsequent event, after the decision had been taken by the Rent Controller. However, even before this Court counsel could not show that an application under Order 41 Rule 27 CPC before the Appellate Authority had been filed and, therefore, in revision for the first time this argument cannot be accepted as such.

It was open to the tenant to place this matter before the Appellate Authority, since he had sufficient time, since the appeal was filed on 04.10.2011 and decided only on 09.01.2013. But having chosen not to do so, he cannot now raise this issue here in revisional jurisdiction. This Court is only to see whether the Courts below have acted legally within the parameters at the time of the proceedings only if the orders suffer from any procedural infirmity, the revisional jurisdiction is to be

exercised.

It is settled principle that this Court is not sitting as a Court of second appeal which would re-examine the matter. The said view has been laid by the Constitutional Bench of the the Apex Court in '**Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh' 2014 (9) SCC 78**. The relevant observations read as under:-

“45. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court/First Appellate Authority because on re-appreciation of the evidence, its view is different from the Court/Authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/Authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to re-appreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High

Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.”

The said view has been followed and reiterated in '**M/s Boorugu Mahadev & Sons & another Vs. Sirigiri Narasing Rao & others'** (2016) 3 SCC 343 wherein the High Court had interfered with the findings of the fact and that reasoning was held to be not justified in view of the law laid down. The relevant observations read as under:

*“21. Likewise, when we peruse the impugned order, we find, as rightly urged by the learned counsel for the appellants, that the High Court did not keep in mind the aforesaid principle of law laid down by the Constitution Bench in the case of **Hindustan Petroleum Corporation Ltd. (supra)** while deciding the revision petition and proceeded to decide the revision petition like the first appellate Court. The High Court as is clear from the judgment probed in all the factual aspects of the case, undertook the appreciation of whole evidence and then reversed all the factual findings of the appellate Court and restored the order of the Rent Controller. This, in our view, was a jurisdictional error, which the High Court committed while deciding the revision petition and hence it deserves to be corrected in this appeal. In other words, the High Court should have confined its inquiry to examine as to whether any jurisdictional error was committed by the first appellate Court while deciding the first appeal. It was, however, not done and hence interference in this appeal is called for.”*

Accordingly, there is no merit in the present revision petition and the same is dismissed.

MARCH 28, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No