

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 4974 of 2015(O&M)
Date of decision:23.08.2017

Gopal Dass

...Petitioner

Vs.

Resham Singh

...Respondent

CORAM:-HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. Namit Gautam, Advocate,
for the petitioner.

Mr. Hemender Goswami, Advocate,
for the respondent.

RAJIV NARAIN RAINA, J. (Oral)

1. On his own admission, the respondent-tenant came to occupy the disputed room in the month of April, 2008 from Updesh Kumar son of the landlord Gopal Dass. It was his version that the rent for the room was paid uptill the month of October 2013 and, thereafter, the landlord (Updesh Kumar) refused to receive the rent from the respondent and threatened to get the room vacated. Consequently, the respondent tenant filed a civil suit against Updesh Kumar seeking permanent injunction restraining him not to interfere with his peaceful possession of the demised premises.

2. It is beyond cavil that Updesh Kumar is not the owner of the property in dispute, which was let out by Updesh Kumar. The owner is the present petitioner and it is apparent that respondent Resham Singh was not a tenant but a licensee under Updesh Kumar and at the same time a trespasser, as far as the petitioner Gopal Dass is concerned as he was inducted without authority of owner and landlord. If Resham Singh is placed in the status of a licensee, then the law is that license can be revoked cancelled without much

ado by the procedure prescribed under Sections 60 to 64 of the Indian Easements Act, 1882, in terms of the two illustrations (a) and (b) of Section 61, explaining revocation express or implied.

3. When the petition was filed for eviction by the father Gopal Dass, the mistaken defence taken by the tenant was that he was not the landlord but his son was. If the dispute as to the relationship of landlord and “tenant” was *bona fide*, the Rent Controller would be warranted to put the lis to trial but in the present case denial of the relationship is not *bona fide* and has been set up time and again to prolong the litigation.

4. Learned counsel for the respondent informs the Court that respondent is a Chowkidar employed in some establishment and, therefore, he does not have the funds to deposit the sum of ₹ 1,43,875/- representing arrears of rent as directed by this Court vide interim order dated 08.08.2017. The deposit was to be made in the office of the Registrar General of this Court for further consideration of the petition against the eviction order. However, it was also directed in that interim order the amount was not to be disbursed without leave of this Court. This order was made to test the *bona fides* of the respondent. Since his counsel throws up his arms and admits that his client does not possess the means to deposit the amount I am left no option except to order immediate eviction of the trespasser-tenant.

5. The Rent Controller's order was in favour of the landlord. However in the appeal before the Appellate Authority, the learned Judge has remanded the case to the Rent Controller for a fresh decision. The reasons assigned by the Appellate Authority, Ludhiana in the impugned order dated 09.04.2015 is that no issues were framed; proper procedure was not adopted by the Rent Controller; there is no rent note either; there is no assessment

register showing the relationship between the landlord and tenant: thereby concluding that “There is lot of dispute arising in this case which can be resolved only by way of leading evidence”. This was wholly incorrect reasoning to be adopted.

6. The Appellate Authority for fallacious reasons contained in one short paragraph has remanded the case for fresh decision. The work done by the Appellate Authority, Ludhiana is to say that the least is cryptic and far from satisfactory as the process of reasoning is disappointingly facile and cannot be legally sustained. I find very little analysis of the materials on record justifying remand, even assuming he had the power to do so, on the real issue involved as to why the conclusion was reached only to apparently shirk from the responsibility and pass on the buck back to the Rent Controller.

7. The Division Bench judgment of this Court in Raghu Nath Jalota v. Romesh Duggal and another, AIR 1980 Punjab & Haryana 188 held that the Appellate Authorities under East Punjab Urban Rent Restriction Act, 1949 (old Act) has no jurisdiction to remand the case to the Rent Controller for fresh decision. In reaching this conclusion the Division Bench drew strength from the Full Bench decision of this Court in M/s Pitman's Shorthand Academy Vs. M/s B. Lila Ram & Sons, AIR (37) 1950 East Punjab 181 : 1950 PLR (1) that the Rent Controller and the Appellate Authority are *persona designata* and, therefore, having rendered the decision turn *functus officio* and have no residuary power to remand a case except to call for a report from the Rent Controller by a limited remand.

8. It is argued by Mr. Namit Gautam appearing for the petitioner-landlord that the Rent Controller has provisionally assessed rent in a sum of

₹ 1,500/- per month with arrears standing at ₹ 85,375/-. The order was passed on 28.05.2014. The provisional assessment order was not complied with and, therefore, the respondent in arrears of provisional rent can well be non-suited for non-payment. It is for this reason that I had called upon the respondent to make interim deposit by the order dated 08.08.2017 which the respondent is in no mood to deposit, which act I neither criticize nor applaud when it is stated that he is employed as a Chowkidar in some establishment and may not be able to rustle the amount of arrears but the consequences are inevitable eviction in a case there is no plausible defence.

9. On the other hand, Mr. Hemender Goswami, Advocate submits that dispute regarding relationship was raised not without reason since his client accepted Updesh Kumar as a tenant since Updesh Kumar thought himself as the owner and landlord of the demised premises being a part of the building. He submits that the respondent had nothing to do with Gopal Dass and since he has denied the relationship the Rent Controller was not liable to assess provisional rent when a dispute had been raised that Gopal Dass was not the landlord of the Resham Singh inducted by the son of the landlord. To support his argument he relies upon the judgment in Gawritex Industries Limited v. SQN. LDR. Gurdial Singh (Retd.) and others, 2009 (4) RCR (Civil) 70 and in Archana Kapoor v. Goyal Brothers, 2011(4) LawHerald 3117. In Archana Kapoor's case Mr. Hemender Goswami quotes lines from paragraph 6 which reads as follows:-

“6. No doubt that the rent has been tendered on 11.08.007 but that appears to be not a fault of the respondent because on 04.04.2007, the Rent Controller had only assessed the arrears of rent with costs whereas on 02.05.2007, the amount of

interest was assessed. Thereafter, the Court was on leave and on the next date, on the request of parties, it was adjourned and ultimately on the effective date i.e on 11.08.2007, the rent was tendered. In any case, this question is not required to be decided by this Court in view of the fact that the respondent has denied the relationship of landlord and tenant with the petitioner and an issue in that regard was struck by the Rent Controller, therefore, in view of the consistent view of this Court that wherever the relationship of landlord and tenant is denied, the provisional rent is not required to be assessed and paid.”

10. It is his submission that the tenant did not have opportunity to produce his evidence that Gopal Dass was not the landlord and neither did the landlord prove his title documents to establish himself as landlord. This submission does not hold much ground since the petitioner produced a sale deed of the house in dispute in which the demised room fell. This was sufficient material to rebut a denial of relationship of landlord and tenant between Gopal Dass and Resham Singh as had no come into existence as per the showing of the respondent. I have therefore no doubt that order of the Appellate Authority is neither legal nor valid and deserves to be set aside.

11. Accordingly, the impugned order dated 09.04.2015 passed by the learned Appellate Authority, Ludhiana is set aside and the eviction order passed by the Rent Controller, Ludhiana dated 09.07.2014 is restored.

12. Mr. Namit Gautam as a gesture of goodwill on instructions from his client has given up the claim for arrears of rent on humanistic grounds and this is worthy of appreciation. Accordingly, the petition is allowed and

the respondent is directed to vacate the premises within 15 days from the date of communication of this order upon him. Police help if required, will be extended to restore possession of the demised premises, being a single room in the residential house, to the petitioner.

(RAJIV NARAIN RAINA)
JUDGE

23.08.2017

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Whether speaking/reasoned *Yes*

Whether reportable *No*