

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.4734 of 2017

Date of Decision: 17.08.2017

Promila and another

... Petitioners

Versus

Vidya Vishavjit

... Respondent

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

Present: Mr. Yogesh Goel, Advocate,
for the petitioner.

RAJIV NARAIN RAINA, J.

1. Defendant's application under Order 7 Rule 11 read with Order 2 Rule 2 CPC for rejection of the plaint has been dismissed in a pending petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 ("1949 Act") for eviction of the tenant from the ground floor of Flat bearing No.403 Sector-45-A, Chandigarh.

2. The tenant is in revision assailing the order of the trial Court dated July 22, 2016 refusing to reject the plaint. After filing of the ejectment petition the landlady filed another petition for eviction on the ground of non-payment of rent. The grounds taken in the first petition for eviction by the landlady is for personal use and her children's personal necessity to settle in Chandigarh. The landlady is a senior citizen. The first petition was filed on July 03, 2015. The second petition on July 27, 2015 for eviction on the ground of non-payment of rent w.e.f. March 01, 2011 till date of the petition @₹11,000/- rent per month.

3. On notices received from the Rent Controller, Chandigarh in both the cases the petitioner-tenant preferred the application under Order 7 Rule 11 CPC for rejection of plaint read with Order 2 Rule 2 CPC. The contention raised is that the ground of eviction for non-payment of rent should have been asserted in the first petition under Section 13 where the ground taken was personal necessity and, therefore, the landlady is deemed to have relinquished her right to arrears of rent. It is argued that nothing stopped the landlady from claiming eviction on the ground of non-payment of rent in the first petition itself. It is asserted that the second petition is verbatim copy of the first except change in one line of para.6. The other objection is that the landlady has concealed filing of the earlier rent petition pending in a different Court except change in one line in para.6 of the petition.

4. It is argued that had the petitioning tenant been in arrears of rent then landlady would have included the claim in the earlier petition. The application was contested by the landlady urging that the Order 2 Rule 2 CPC was not applicable in rent petitions while contesting the application for rejection of petition. It is admitted fact that the rent was not claimed in the earlier petition.

5. As a matter of fact in para.5 of the first petition the landlady had pleaded that tenant had not paid rent w.e.f. March 2011 and the petitioner-respondent reserves her right to file another rent petition on the ground of non-payment of rent.

6. Since the landlady has a right to file eviction petition on any of the grounds contained in Section 13 of the 1949 Act the right to recover

possession can be split up and accordingly the first petition is not fatal to the maintainability of the second petition since both grounds are independently available by statute and, therefore, the provisions of Order 2 Rule 2 CPC cannot be blindly applied to bar the second suit even when right to file for eviction based on non-payment of rent was kept reserved in the first petition. Both rights are independent of each other and tenant in default cannot urge that if eviction for non-payment of rent was not made ground in the first petition then the arrears of rent will never be paid, assuming the tenants is in arrears. Whether the tenant is or is not in arrears of rent is for the Rent Controller to determine and not for this Court to express any opinion at the interlocutory stage.

7. I find no legal infirmity in the order of the Rent Controller dismissing the application under Order 7 Rule 11 read with Order 2 Rule 2 CPC.

8. As a result, the petition is dismissed. There is another matter which deserves noticing in this case is that the impugned order was passed on July 22, 2016 and the present petition has been filed almost after a year on July 17, 2017. No reason has been explained for the delayed approach which is an additional factor which goes against the petitioner in the context of a prayer for stay of further proceedings before the Rent Controller.

9. After I reserved orders and before I could pronounce them, the learned counsel for the petitioner appeared in Court on a mention craving leave to present two applications under Section 151 CPC numbered Civil Miscellaneous Nos.16195-96-CII of 2017 for exemption and a second application i.e. CM No.16196-CII of 2017 wherein proof of deposit of

arrears of rent praying for rehearing of the case) disclosing that after I had reserved orders on July 26, 2017 the tenant had tendered the entire arrears of rent due in terms of the rent assessment order passed by the Rent Controller. The re-hearing of the case is sought for this reason.

10. I have considered the applications as well.

11. I have no doubt in mind that when the fact of payment of rent is brought to the notice of the Rent Controller by a application, he would pass an order in accordance with law. The landlady is well within her rights to resort to legally permissible strategy of separating a petition which is likely to take time for its disposal since evidence has yet to come in but as far as arrears of rent and non-payment is concerned, the cause of action is recurring every month of default and, therefore, she is within her rights to apply for eviction separately on the ground of non-payment of rent to compel payment. The tenant did well in paying the up to date arrears of rent to the landlady after having reserved orders on July 26, 2017 and the counsel knowing what the fate of the case might be.

(RAJIV NARAIN RAINA)
JUDGE

17.08.2017
manju

Whether speaking/reasoned Yes

Whether reportable No