

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

C.R. No. 5629 of 2016 (O & M)

Date of decision: 25.05.2017

Ajay Kumar Shah (deceased) through L.Rs. and another

...Petitioner(s)

Versus

Harish Kumar Gupta

...Respondent(s)

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

Present: Mr. Vikram Rathore, Advocate,
for the petitioners.

G.S.SANDHAWALIA, J.

Challenge in the present revision petition filed by the tenant under Section 15(6) of The Haryana Urban (Control of Rent and Eviction) Act, 1973 (in short 'the Act') is to the eviction orders dated 10.11.2014 passed by the Rent Controller, Panchkula and the Appellate Order dated 24.05.2016. The premises in question is H. No. 957, Ground Floor, Sector 19, Panchkula, consisting of two bed rooms, one wash room and a kitchen. The ground of eviction is bona fide requirement of the landlord who is an ex-serviceman and who pleaded that the tenancy had been created in the year 1999 with Ajay Kumar Shah who expired on 26.08.2012 and the petitioners are the legal representatives of the deceased-tenant. The plea set up was that the petitioner was residing in Chandigarh and, therefore, he required the premises in question. The non-payment of rent from December, 2001 was also pleaded.

The defence of the tenant was that the house in Chandigarh was

owned by the landlord, who had purchased the same on the basis of the General Power of Attorney and there is no default in the payment of rent or electricity charges.

On 20.03.2017, after hearing arguments, counsel had taken time to file necessary affidavit to vacate and hand over vacant possession by 31.12.2017. Similar request was also made on 11.05.2017. Today, counsel submitted that he may be heard on merits and accordingly, the present revision petition is being decided.

After keeping in mind the evidence of the landlord and the Clerk from the Housing Board, Haryana which showed the allotment of the premises in question in the name of the petitioner, the Rent Controller noticed that the ground of eviction for non-payment had become infructuous on account of the tendering of the provisional rent. Therefore, the rent which had been tendered from 01.10.2009 till 30.06.2013 and accepted was held to be giving no cause of action to the landlord to seek ejectment on that ground.

The objection that the House No. 2386/2, Sector 47-C, Chandigarh was owned by him on account of the fact that he had General Power of Attorney of Charanjit Singh was also rejected while noticing that he was an ex-serviceman, who had retired in the year 1994 and the registered owner had never been produced by the tenant to prove the fact that the property had been sold and, therefore, it was held that the need was bona fide. The respondent had permitted the tenant to reside from 1999 till September, 2012 and had not questioned the tenancy or sought ejectment and, therefore, his intention was held to be not mala fide. Resultantly, the objection of the maintainability of the petition that the earlier one had been

dismissed under Order 9 Rule 2 CPC was also rejected that it would not be a bar to file a fresh petition.

As noticed, the Appellate Authority has also upheld the order while rejecting an application for additional evidence filed that one Sajid Mirza had to be examined on the ground that the property had been sold to him. It was resultantly observed that under Clause (b) of Order 41 Rule 27 CPC, the application was not liable to be allowed since nothing could be shown as to why the said witness was not examined on an earlier occasion. It is also pertinent to notice that the said argument was also raised before the Rent Controller and the Rent Controller had also noticed that the proposed vendee had never been summoned and examined since the plea of the tenant was that he had agreed to purchase the property in question. Similarly, the objection that an earlier petition was dismissed was also rejected on the ground that the landlord had explained that the original tenant had died and that is why he did not pursue the earlier petition. The fact remains that once the petition was dismissed under Order 9 Rule 2 CPC only on account of the non-service of the deceased-tenant and, therefore, there being no decision on merits as such, reliance upon the judgment in ***Amit Bansal vs. M.L. Goel, 2014 (1) Law Herald 176*** was well justified that the second petition was maintainable on the same cause of action.

The necessary ingredients as such having been pleaded and the fact that the landlord does not have any similar property in the urban estate of Panchkula, the argument raised that he was for all practical purposes is owner of H. No. 2368/2, Sector 47-C, Chandigarh is without any basis. The bar also would only be of the same urban estate and Panchkula constitutes a separate urban estate and the landlord cannot be precluded from seeking

eviction on the ground of allegedly owning a property and in occupation of one in the urban estate of Chandigarh. In *M/s. Ram Dass Hira Lal and another vs. Sunil Kumar Sekhri and others, 2007 (4) PLR 593* similar proposition arose and it was held that ownership in the adjoining urban area of Panchkula would not be a bar as such to seek eviction from the premises in Chandigarh since it is a different urban area.

Resultantly, keeping in view the above, the findings recorded by the Courts below do not suffer from any infirmity or illegality, which would warrant interference in revisional jurisdiction.

Accordingly the present petition is dismissed in limine.

25.05.2017
shivani

(G.S. SANDHAWALIA
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No