

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

209

CR No.7641 of 2014 (O&M)

Date of decision: 03.05.2017

M/s Manchanda Glass House

....Petitioner

Versus

Sudesh Kumar Kalra

...Respondent

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

Present: Mr.Pranav Handa, Advocate, for
Mr.R.S.Bajaj, Advocate, for the petitioner.

Mr.Sharnav Katyal, Advocate, for the respondent.

G.S. SANDHAWALIA, J. (Oral)

The present revision petition, filed by the petitioner-tenant, is directed against the order passed by the Appellate Authority, Jalandhar dated 07.10.2014 whereby eviction has been ordered on the ground of non-payment of rent. A finding has been recorded that there was a relationship of landlord-tenant, which had been denied by the petitioner and the relationship set up was with one Anil Kumar, who had also appeared as RW2. The Appellate Authority has discussed in detail the admissions made by Anil Kumar, to come to the conclusion that there was relationship of landlord-tenant and ordered eviction, by holding that there was non-payment of rent, as such.

It is settled principle that once the relationship of landlord-tenant 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)**, the Court 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**.

A perusal of the record would go on to show that the eviction petition was filed to evict the tenant from the premises which were shown red in colour in the site-plan and the boundaries had been mentioned in

the heading of the eviction petition. The claim of the respondent-landlord was that his father, Late Ram Dhan was the owner of the shop which was rented out @ Rs.1400/- per month. After his death, the respondent along with the other family members became the owners of the property and their power of attorneys were attached with the petition. Ejectment was sought on the ground of non-payment of rent from 01.06.2000 @ Rs.1400/- per month.

The defence set up by the petitioner-tenant was that the property was originally owned by Sada Nand, who was none else but the brother of the landlord's father, namely, Ram Dhan. It was his case that Sada Nand had purchased the property on 31.03.1962 and that the property had been inherited by his widow and children, namely, Anil Kumar and a daughter. After the death of widow of Sada Nand in the year 1990, Anil Kumar and his sister became absolute owners of the property bearing No. WD 170, Ali Mohalla, Jalandhar City and the landlord or his family members had no right in the property which had been rented by Anil Kumar at a monthly rent of Rs.500/-.

In the replication filed by the landlord-respondent, it was alleged that there existed relationship of landlord-tenant which had come into existence on the death of Ram Dhan, who had rented out the property in dispute on 23.02.1999 (Ex.A2), which had been duly witnessed. The property was evacuee property and was managed by the father of the respondent-landlord and its domain and control was with him. The tenant had been inducted vide the rent note dated 23.02.1999 by the father of the

landlord, who was the landlord of the premises in dispute and therefore, by operation of law, he had become the landlord and owner of the premises. The actual rent was Rs.1400/- per month and Anil Kumar had never inducted the tenant in the premises at Rs.500/- per month and he had no authority to receive the rent.

The following issues were framed *inter se* the parties:

- “1. Whether the relationship of landlord and tenant exists between the parties? OPP
2. Whether the respondent is in arrears of rent at the rate of Rs.1400/- per month w.e.f. 01.06.2000 as prayed for? OPP
3. Whether the petitioner has no cause of action to file the present petition? OPR
4. Relief.”

The Rent Controller fell into the cardinal mistake, as if he was adjudicating upon the title issue and came to the conclusion that there was no proof regarding the ownership of the suit property, regarding the title and by examining the Deed Writer of the rent note- Gulshan Kumar-AW5, it was not sufficient to prove the relationship of landlord-tenant. The rent receipts issued by Anil Kumar (Exts. R1 to R6) were then taken into consideration along with the conveyance deed dated 31.03.1962, which was in favour of Sada Nand, to hold that the ownership was of Anil Kumar of the suit property. Resultantly, issue No.1 was decided against the landlord. Resultantly, on the ground that there was no relationship of landlord-tenant, the question of arrears of rent not being payable, the same was decided against the respondent- landlord and the petition was dismissed on 06.10.2012.

The appeal has, thus, rightly been allowed by the Appellate Authority, Jalandhar, by taking into consideration the fact that there was a rent note which was executed *inter se* the parties on 23.02.1999 (Ex.A2), which was also mentioned in the replication, as noticed above.

A perusal of the rent note would go on to show that the shop at Ali Mohalla, Jalandhar City was let out and it was mentioned that it was owned by Ram Dhan and has been taken on rent @ Rs.1400/- per month, for the purpose of running a shop of photo-frame. As noticeable, Ex.5/A has also been proved whereby the rent note was duly scribed and the Scribe, namely, Gulshan Kumar, Deed Writer-AW5 had also been produced by the respondent-landlord and therefore, the rent note was duly proved. Under the provisions of the East Punjab Urban Rent Restriction Act, 1949, the definition of 'landlord' under Section 2(c) reads as under:

“2 (c) "Landlord" means any person for the time being entitled to receive rent in respect of any building or rented land whether on his own account or on behalf, or for the benefit, of any other person, or as a trustee, guardian, receiver, executor or administrator for any other person, and includes a tenant who sublets any building or rented land in the manner hereinafter authorised, and, every person from time to time deriving title under a landlord.”

Hon'ble Supreme Court in **K.D.Dewan Vs. Harbhajan S.Parihar 2002 (2) PLR 682** has held that a person, other than the owner, can also be the landlord. Relevant observations read as under:

“A perusal of the provision, quoted above, shows that the following categories of persons fall within the meaning of

landlord :

- (1) any person for the time being entitled to receive rent in respect of any building or rented land;
- (2) a trustee, guardian, receiver, executor or administrator for any other person;
- (3) a tenant who sublets any building or rented land in the manner authorised under the Act and
- (4) every person from time to time deriving title under a landlord.

Among these four categories of persons, brought within the meaning of 'landlord', Mr. Sharma sought to derive support from the last category. Even so that category refers to a person who derives his title under a landlord and not under an owner of a premises. For purposes of the said category the transferor of the title referred to therein must fall under any of the categories (1) to (3). To be a landlord within the meaning of clause (c) of section 2 a person need not necessarily be the owner; in a vast majority of cases an owner will be a landlord but in many cases a person other than an owner may as well be a landlord. It may be that in a given case the landlord is also an owner but a landlord under the Act need not be the owner. It may be noted that for purposes of the act the legislature has made a distinction between an owner of a premises and a landlord. The Act deals with the rights and obligations of a landlord only as defined therein. Ownership of a premises is immaterial for purposes of the Act.”

Once the father of the respondent-landlord had rented out the property, it does not lie in the mouth of the present petitioner to deny the relationship, as such, and avoid paying the rent.

The Appellate Authority was, therefore, well justified in reversing the error which the Rent Controller had made by deciding issue

No.1 in favour of the petitioner-tenant that the title was with Anil Kumar and therefore, the landlord had no authority to seek eviction. Even though Anil Kumar was produced in support but still it is a matter of fact that Anil Kumar never chose to file any other eviction petition or suit, knowing very well that the suit property had been rented out by the father of the present respondent. The family arrangement which had been relied upon by the respondent was never under challenge and therefore, the Rent Controller was not justified in deciding the said issue against the present respondent-landlord. The arrears of rent were from 01.06.2000, as rightly noticed and even the rent receipts in favour of Anil Kumar were only from 23.02.1999 to 01.07.2002 and therefore, arrears were there and the receipts, in such circumstances, were rightly rejected on the ground that they had not been shown in the Income Tax Returns that the amount was received as rent. As such, the eviction order is, thus, liable to be upheld as the same does not suffer from any procedural infirmity or irregularity which would warrant interference by this Court under revisional jurisdiction.

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

03.05.2017

Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes