

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

C.R. No. 7997 of 2016 (O & M)

Date of decision: 22.05.2017

Raj Kumari

...Petitioner(s)

Versus

Suresh Chand Sharma and another

...Respondent(s)

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

Present: Mr. Atul Yadav, Advocate,
for the petitioner.

G.S.SANDHAWALIA, J.

The petitioner challenges the eviction order passed by the Rent Controller, Gurugram dated 18.05.2016 on the ground of non-payment of rent. The said order has been upheld in appeal by the Appellate Authority on 12.10.2016, which is also subject matter of revision filed under Section 15(6) of The Haryana Urban (Control of Rent and Eviction) Act, 1973 (in short 'the 1973 Act').

The ejectment application filed by the respondent-landlord was on the ground that he was the owner of the ground floor of the house bearing No. 954 measuring 28.37 sq. mts., the boundaries of which had been given in the ejectment application. The right of eviction was sought on the basis of the allotment letter dated 17.05.1997 issued by The Haryana Housing Board and possession had been handed over on 17.07.1997. The premises had been let out in the year 2003 @ Rs.1,600/- per month, which was increased to Rs.1,800/- per month in August, 2008, possession of which was sought on the ground of non-payment of rent from September, 2008.

The refusal by the petitioner, who is the wife of respondent no. 2, allegedly to make the payment of rent was on the ground that they had taken the plea that they had become owners of the property as they had General Power of Attorney which was held to be a false and bogus document prepared from Madhya Pradesh. Resultantly, on the strength of the same, they had prepared an agreement dated 11.07.2004 in favour of petitioner no. 1. The sale deed dated 24.09.2010 had also been got executed by them on the basis of the said documents and the respondent-landlord had lodged an FIR on 25.03.2012 under various provisions. The petitioner had admitted the factum that the allotment had been made to the respondent but it was denied that it had been let out by him. The factum of the criminal case was also admitted and the plea of petitioner no. 1 was that a civil suit for permanent injunction had also been filed against the respondent-landlord. Resultantly, the following issues were framed:-

- “ 1. Whether the respondents are tenants of the petitioner ? OPP.*
- 2. Whether the petitioner is entitled for vacate possession of the rented premises ? OPP*
- 3. Whether the petitioner is entitled for rent, arrears, mesne profit, maintenance charges etc. from the respondents? OPP*
- 4. Whether the respondents are entitled to be evicted from the rented premises on the ground of nonpayment of arrears of rent or bonafide requirement of the petitioner and also on the ground of illegal grabbing occupying from the demised premises? OPP*
- 5. Whether the petitioner has no cause of action and locus-standi to file the present petition? OPR.*
- 6. Whether the petitioner has concealed the true and*

material facts? OPR

7. Whether the petitioner is estopped from filling the present petition by his own act, conduct, commission etc? OPR

8. Whether the petition is not maintainable in the present form?

9. Whether the petition is barred by limitation? OPR

10. Relief.”

The landlord exhibited as many as 38 documents whereas, the petitioner exhibited 4 documents. Before the matter could be concluded by the Rent Controller, the suit for permanent injunction filed by the petitioner was dismissed on the ground that there was no sale deed proved on record to substantiate the claim. Merely because electricity and water bills had been issued in the name but there was no document of ownership of title with the petitioner. Rather, she had admitted that the respondent-landlord had made all the payments and received a no due certificate from the Housing Board and had made payments, the receipts of which were placed on record. The possession certificate had been duly brought on record in the said suit. It was noticed that a charge had also been framed by the Chief Judicial Magistrate on 05.06.2013 in the FIR regarding the forgery of documents and accordingly, the relief of injunction was declined.

The said order has been upheld in appeal by noticing that even the husband of the petitioner did not step into the witness box though he was the alleged General Power of Attorney holder of the landlord, on the basis of which, the alleged transfer had been executed. The General Power of Attorney was not found to be executed in the office of the Sub-Registrar as per the verification report received by the Assistant Commissioner of

Police, Gurugram, Economic Offences Wing Cell.

In such circumstances, keeping in view the evidence which had come on record and the judgment of the Civil Court dated 30.10.2014 (Ex.P-30), it was held that there was a relationship inter se the parties of landlord-tenant as the petitioner had herself admitted that the ownership was previously of the respondent-landlord. The sale deed which has been set up in favour of the petitioner dated 24.09.2010 was disbelieved on the ground that the General Power of Attorney was not registered which was being held by the husband. It was noticed that in her cross examination, the petitioner had stated that she is in possession of the premises since 2002 and, therefore, there existed a relationship of landlord-tenant and she could not, on the other hand, claim that she was owner in possession since the date of purchase.

Resultantly, it was held that the rate of rent was Rs.1,600/- per month between the parties and the petition was maintainable and a sum of Rs.78,489/- was assessed as rent alongwith interest. The ground of personal necessity was rejected on the ground that no evidence had been led to that effect and resultantly, issues no. 5 to 9 whereby, various objections had been raised by the petitioner regarding the maintainability of the petition being barred or concealment, were decided against the present petitioner. The eviction order had been passed whereby, the sum assessed was to be paid within a period of one month.

The same has been upheld by the Appellate Authority vide order of even date when the appeal was also dismissed regarding the suit for permanent injunction. Accordingly, the Appellate Authority came to the conclusion that where there was denial to the status of the relationship as such and there would not be justification to frame an assessment order and

the ejectment was, thus, accordingly upheld.

From the above sequence of events and the material which has been placed on record, it would be thus apparent that the respondents have been denied the benefits of the fruits of the property by way of rent from September, 2008 and had started the battle for recovery in September, 2013 apart from having to also appear as a witness to criminally prosecute the petitioner and her husband. The position stands settled by this Court in a string of judgments whereby, it has been held that where a tenant denies the relationship, he is not to be given any opportunity as such to deposit the rent. Reference can be made to the judgment passed by this Court in **'Hukma Devi Vs. Bhagwan Dass' 2003 (2) PLR 371**. In the said judgment it was held that where there is a complete denial of relationship of landlord and tenant, then the Rent Controller would not be under any obligation to pass an interim order assessing the rent, interest and cost of application. It was also held that an unscrupulous tenant, thus, cannot be permitted to take the stand that he should be permitted to deposit the assessed arrears and, thus, would successfully delay the payment of rent.

The said view was followed in **'Yashpal Singla Vs. Vijay Kumar' 2004 (3) PLR 504**. Thereafter, in **'Jagdish Singh Vs. Mohan Lal 2004 (3) PLR 78**, keeping in mind the judgment of the Apex Court in **'Vijay Kumar Vs. Prem Lata' 2003 (11) SCC 397**, the entitlement of a tenant to be given an opportunity to tender arrears of rent on account of denial of relationship of landlord and tenant was rejected. The said view was, thereafter, followed in **'Sandeep Shahi Vs. Asha Rani' 2010 (4) PLR 630**.

Resultantly, keeping in view the above discussion, this Court is of the opinion that the orders passed are based on factual matrix which

require no interference in revisional jurisdiction. Accordingly the present petition is dismissed in limine.

22.05.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No