

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

C.R. No. 8055 of 2016 (O & M)

Date of decision: 20.03.2017

Bimla Kumari @ Naina Gill

....Petitioner(s)

Versus

Shyam Lal

...Respondent(s)

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

Present: Ms. Ritam Aggarwal, Advocate,
for the petitioner.

G.S.SANDHAWALIA, J. (Oral)

The present revision petition under Section 15(5) of the East Punjab Urban Rent Restriction Act, 1949 (in short 'the 1949 Act') is directed against the concurrent findings passed by the Rent Controller and the Appellate Authority, Ludhiana whereby, eviction has been ordered on 21.01.2014 and upheld on 11.07.2016. The ground for eviction is the arrears of rent and bona fide requirement. Since the relationship as such of landlord-tenant was denied, the plea of personal necessity was also accepted and it has been noticed by the Appellate Authority that no questions have been asked to the witnesses challenging the requirement as such. Nothing had been brought on record to rebut the contention that the property was not required for the use and occupation of the landlord and the eviction order was accordingly upheld.

Counsel for the petitioner has vehemently argued that it has come in the cross examination of the landlord that he is not the owner of the property and he had been put in possession only by the person from whom

he had alleged to have purchased the property. In the absence of any sale deed, he could not as such claim eviction of the petitioner on the ground that she was the tenant. It is accordingly submitted that in such circumstances, the authorities below were in error in allowing the eviction petition. It is also submitted that there was agreement to sell the tenanted premises for a sum of ₹3,00,000/- in November, 2003 and a sum of ₹2,50,000/- had been received from the petitioner-tenant in part performance of the agreement and, therefore, the ejectment was not justified.

The arguments raised by the counsel for the petitioner do not merit acceptance. A perusal of the record would go on to show that in the eviction petition filed on 15.05.2009, it was mentioned that the tenancy was oral coupled with delivery of possession and there were arrears from 01.09.2003 @ ₹2,500/- per month. The ejectment is also sought on the ground of bona fide requirement. The defence, as noticed, of the petitioner is that there is an agreement to sell and the original could not be produced since it is the case of the tenant that on account of illiteracy, the respondent had kept the agreement. Once the said stance has been taken, it is apparent that there is no dispute as such regarding the ownership of the respondent since the agreement was set up in defence and, thus, it is apparent that it is the case of the petitioner that the respondent was the owner with whom she had entered into an agreement to sell. Section 2(c) of the 1949 Act provides for an expansive meaning of the word 'landlord' and even a person who is not the owner can be the landlord if he is receiving the rent or is entitled to receive rent, as has been held by the Apex Court in ***K.D. Dewan vs.***

Harbhajan S. Parihar, 2002 (2) PLR 682. It is to be noticed that a civil

suit was filed against the respondent and the petitioner-tenant had claimed that she did not know that whether it has been dismissed as such. The factum of no agreement having been produced on record is also to be noticed apart from the admission of the husband, who appeared as RW-2, and stated that the respondent was the owner of the house which led to the eviction order.

It is pertinent to notice that the landlord had taken a plea that a false suit for permanent injunction had been filed by the petitioner alleging an agreement to sell. A perusal of the said judgment dated 13.09.2011 would go on to show that the petitioner-tenant, alongwith her husband, filed a suit for permanent injunction restraining the landlord from interfering in the peaceful possession on the basis of the same agreement. The following issues were framed in the said civil suit:-

- “1. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP*
- 2. Whether the plaintiff has no cause of action to file the present suit? OPD.*
- 3. Whether the plaintiff has no locus standi to file the present suit? OPD*
- 4. Whether the plaintiff has not approached the court with clean hands? OPD*
- 5. Relief.”*

Resultantly, it was held that neither any date of agreement had been given nor the date of execution had been given. The tenant could not tell the name of the scribe or the names of the witnesses and she admitted that she had not kept the copy of the agreement. The stand of the landlord in that case also was that the present petitioner was a tenant in the property.

Resultantly, issue no. 1 was decided against the present petitioner that she

was not entitled for permanent injunction. Similarly, under issues no. 2 and 3, regarding the cause of action and locus standi, it was held that the petitioner and her husband had no such cause of action to file the suit and they could not sue their landlord as being admitted tenants. No dispute had been raised regarding the relationship of landlord-tenant and it had neither been pleaded. Resultantly, under issue no. 4, it was held that the plaintiff had not approached the Court with clean hands and reliance was placed upon Ex.D-1 of a settlement inter se of the matter by the Samaj Chetna Welfare Society, which was the plea taken by the landlord that the petitioner had admitted the fact that he was her landlord and she would vacate the premises on or before 25.09.2006. It is not disputed that the said findings dated 13.09.2011 have not been upset in appeal and would be binding upon the parties inter se.

Counsel for the petitioner also could not bring to the notice of this Court that any suit for specific performance had been filed on the basis of the alleged agreement in spite of the fact that more than a decade has gone by which has also been found to be not existing. The Appellate Court has also noticed the absence of the original agreement and the lack of relevant evidence. The plea that the agreement to sell or its copy had not been supplied to her could not be accepted once a heavy amount of ₹2,50,000/- had been paid out of the total consideration of ₹3,00,000/-.

Resultantly, keeping in view the above discussion, this Court is of the opinion that the ejectment which has, thus, been ordered is justified as the petitioner has failed to bring on record any specific material to show that she had any right to continue in the possession and is admittedly not paying any rent. Resultantly, the eviction on the ground of non-payment and of

bona fide requirement is well justified in the facts and circumstances of the case and the present revision petition is accordingly dismissed.

20.03.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No