

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.2567 of 2007 (O&M)
Date of Order:16th October, 2018

P.S.Chatwal

..Petitioner

Versus

Sardari Lal

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Arun Jain, Sr. Advocate, with
Mr. Ashok Jindal, Advocate,
Mr. Tarundeep Singh Khaira, Advocate and
Mr. Abhishek Dhull, Advocate,
for the petitioner.

Mr. Vikas Singh, Advocate,
for the respondent.

ANIL KSHETARPAL, J.

Tenant-petitioner is in revision petition against the order passed by learned Rent Controller affirmed by the learned Appellate Authority ordering eviction of the petitioner on the ground that tenant having sub-let the premises.

This court has heard learned senior counsel for the petitioner and learned counsel appearing for the respondent at length and with their able assistance gone through the judgments passed by the courts below and the record.

Learned senior counsel appearing for the tenant-petitioner has submitted that original petition as filed was not maintainable as the petition was filed by Arun Malhotra who was neither the owner nor the landlord. Learned counsel further referred to letter dated 03.07.1992 to contend that the owner had intimated the petitioner that the property has been sold to Amrik Singh. Hence, he submitted that the petition was not maintainable as it was filed on 28.09.1995. He further submitted that there is no evidence of parting with the possession of the premises by the tenant. He further submitted that in this case it is proved on the file that tenant had entered into a partnership and therefore, there was no subletting of the premises in question.

On the other hand learned counsel appearing for the respondent-landlord has submitted that originally no doubt petition was not properly instituted however, during the pendency of the appeal the aforesaid defect has already been corrected as Sardari Lal had filed an application for substitution as he had purchased the property which was allowed. He further submitted that tenant has never taken this objection either while filing the written statement or before the courts below. He submitted that learned counsel for the petitioner is incorrect as it has specifically been stated by PW1 Inderjit Malhotra that P.S. Chhatwal has left the possession and is no more in possession of the premises.

As regards letter dated 03.07.1982, learned counsel submitted that there is no evidence that Amrik Singh is owner of the premises or the tenant has even accepted Amrik Singh as his landlord.

Before dealing with the arguments of learned counsel for the parties it may be noted that the premises is alleged to have been sub-let to

one Shri Harminder Singh alias Parminder Singh alias Rozy. He died during the pendency of the petition. Thereafter, shop in question remained closed for approximately 2 months and the landlord filed an application for getting the site inspected. Local Commissioner, as appointed by the trial court, visited the premises in question and found as a matter of fact that the premises are lying locked for almost 20 days. He found that lot of dust and waste had accumulated near the closed shutter of the shop and when he enquired from the neighbours it was disclosed to him that Parminder Singh alias Rozy alias Harminder Singh was in possession but after his death the premises is lying locked except one day when some relative of Parminder Singh had opened the shop once. Apart from this, it may significant to note that when the tenant appeared in evidence, his evidence does not show that he is doing any business in partnership. He clearly admits that he does not remember what amount was invested by him in partnership. He does not know how much investment was made by the other partner. He admits that all accounts books remained in his possession but accounts books were not produced in evidence although specifically called upon. Still further, tenant has not produced even a single invoice having his signatures on sale of the medicines.

Now the stage is set for dealing with the arguments of learned counsel for the petitioner.

First argument that the petition was filed by Arun Malhotra as General Power of Attorney of the owner, is only academic particularly when before the appellate authority subsequent purchaser has been impleaded under Order 22 Rule 10 of the Code of Civil Procedure and now the petition is by the owner namely Sardari Lal. As regards the second argument of

learned counsel, it may be noted that aforesaid letter is with respect to the year 1992 whereas the present petition was filed on 28.09.1995. Tenant has not produced any evidence that pursuant to the letter dated 03.07.1992, he started paying the rent to Amrik Singh or to the firm, namely, Adarsh Jewellers. Hence, the aforesaid letter dated 03.07.1992 would not help the petitioner.

Next argument of learned counsel that the tenant started business in partnership is also to be noticed and rejected. In the present case, tenant is entitled to 25% share in the profit but he would not share the losses. It is well settled that sub-tenancy is always a secrete arrangement between the tenant and sub-tenant. Once an assertion has been made by the landlord and prima facie proved, onus shifts on the tenant to prove that he has not sublet the premises. In the present case, overwhelming evidence has come on record including the report of the Local Commissioner that tenant is not in possession. Not a single invoice proving that the tenant is conducting his business from the premises in question, has been produced. Learned counsel for the petitioner has relied upon a judgment passed by the Hon'ble Supreme Court in the case of **Helper Girdharbhai v. Saiyed Mohamad Mirasahed 1987(3) SCC 538** in support of his submission. On careful reading of the judgment, it is apparent that Hon'ble Supreme Court decided the aforesaid case in a peculiar facts situation and it was not laid down as a ratio decidendi that whenever there is a partnership firm without tenant being not liable for the losses, the partnership would be treated as genuine. Still further, it has come in evidence of the tenant that he does not know anything about the partnership. Accounts books although alleged to be in possession of the tenant, have not been produced.

As regard last argument of learned counsel for the petitioner that there is no evidence of tenant having parted with the possession of the premises it may be noted that Inderjit Malhotra, when appeared in evidence on behalf of landlord has specifically stated that it is only the sub tenant who is running the business of the chemist and tenant is not in possession of the premises. Still further, the report of the Local Commissioner also support this fact.

Tenant has filed an application for permission to place on record various documents as Annexures A-1 to A-22. These documents were earlier sought to be produced in additional evidence before the Appellate Authority. The Appellate Authority after considering the effect of the aforesaid documents has affirmed the order of eviction. The documents which are sought to be placed on file are in the shape of license in the name of the tenant for running a chemist shop under the name of M/s Shivalik Medicose. Apart therefrom, affidavit submitted by the tenant for renewal of the licence are sought to be produced. Apart therefrom, certain communications with the competent authority for grant of license etc. have been filed. A receipt of challan pertaining to Arun Malhotra has also been filed, which only proves deposit of the rent. Still further certain income tax returns have been filed to prove that there was a partnership. In the present case, tenant was required to prove that he has not parted with the possession of the premises. In the considered view of this court the tenant has failed to prove that fact and these documents do not prove that the petitioner is in possession of the premises at the relevant time.

For the reasons recorded above, the revision petition is ordered to be dismissed while upholding the order passed by the learned Rent

Controller affirmed by the learned Appellate Authority.

Other miscellaneous applications were not pressed by learned counsel for the parties.

16th October, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No