

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. CR No. 1122 of 2017
Date of Decision : 02.02.2018

Jatinder VermaPetitioner

Versus

Kulwinder KaurRespondent

2. CR No. 1123 of 2017

Jatinder VermaPetitioner

Versus

Kulwinder KaurRespondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Akshay Jindal, Advocate
for the petitioner-landlord in both the cases.

Mr. Vineet Sehgal, Advocate
for the respondent-tenant in both the cases.

Surinder Gupta, J. (Oral)

Heard.

Petition under Section 13 of Haryana Urban (Control of Rent & Eviction) Act, 1973, filed by petitioner-Jatinder Verma was dismissed by learned Rent Controller. Petitioner filed appeal before the Appellate Authority and during pendency of appeal he moved application for amendment of his petition, which was allowed and he was permitted to add para 8 (iv) and 8 (v) in plaint, which reads as follows:-

“8 (iv) That the petitioner is not occupying any other shop/non-residential premises in the urban area of Panchkula within the Municipal Limits of Panchkula nor the petitioner has vacated/got vacated any such shop/non-residential accommodation/commercial accommodation in the urban area of Panchkula/Municipal Corporation, Panchkula, without any sufficient/reasonable cause after the commencement of 1949 Act.

8 (v) *That the shop in question was constructed in the year 2001. The electric meter in the shop in question was installed in the year 2002. The shop in question was earlier let out to Shri Ram Mehar s/o Tale Ram, Village and Post Office Saketri, District Panchkula, vide rent agreement dated 29.11.2003 for a period of 11 months w.e.f. 01.12.2003 to 30.10.2004 @ 650/- per month. After the development of Sections 2, 3, and 4 of MDC Panchkula, the shop in question falls within the Municipal Limits of Panchkula and as such, the provision of Haryana Urban (Control of Rent & Eviction) Act, 1973, are applicable and as such, the Rent Controller has got jurisdiction to entertain and decide the present ejectment application”.*

After filing of amended plaint and amended reply, revision-petitioner/landlord filed application for framing of issue and providing of opportunity to lead evidence, which was dismissed vide order dated 03.12.2016 passed by Appellate Authority, Panchkula, on the ground that landlord cannot be permitted to fill up lacunae by leading evidence and that the amendment was allowed with the observation that the same is 'clarificatory' in nature and would help the Court in deciding the issue in a more clear and proper manner. While declining application, issue no. (1) “whether the respondent is liable to be evicted from the tenanted premises on the ground mentioned in the petition” was re-caste, as follows:-

“Whether the demised premises falls within the municipal limits of the Panchkula and is more than 10 years old and as such, Rent Controller has jurisdiction to try and decide the petition? OPP.”

On perusal of amendment permitted by the Appellate Authority, I find that besides pleading ingredients as required under Section 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1973, the petitioner was also permitted to plead the fact that shop in question was constructed in the year 2001 and of applicability of provisions of Haryana Urban (Control of Rent & Eviction) Act,

premises falls within the municipal limits of Panchkula and is more than 10 years old? This issue is also an issue of fact. When the petition has been amended and the respondent has also filed reply to amended petition, it was incumbent on the Appellate Authority firstly, to frame fresh issue as per amendment sought by the petitioner and then to provide opportunity to petitioner to lead evidence in support of his case and also to provide opportunity to respondent to produce evidence in rebuttal to the evidence of petitioner-landlord. Conclusion drawn by Appellate Authority that landlord cannot be allowed to fill lacunae, in the facts and circumstances of the case, is not only erroneous but also not sustainable.

Keeping in view above facts, I find merit in this petition and order dated 03.12.2016 passed by Appellate Authority is set aside. It is directed that Appellate Authority will frame necessary issues, as required after amendment of petition, and provide opportunity to parties to lead evidence, which may be recorded by the Appellate Authority of its own or the file may be sent to Rent Controller, Panchkula for recording evidence and sending the report. It is also pointed out here that issue no. 1 framed by Rent Controller relate ground on which ejectment has been sought and issue no. 1 as re-cast by the Appellate Authority does not substitute issue no. 1. This fact may also be looked into by Appellate Authority before proceeding further in the matter.

February 02, 2018
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No