

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

CR No.1431 of 2018(O&M)

Date of decision: 1.3.2018

Jaspal Singh and anotherPetitioners

VERSUS

Rajinder Kumar GoyalRespondent

CORAM: **HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. Fateh Saini, Advocate for the petitioners.

REKHA MITTAL, J. (Oral)

The present petition directs challenge against order dated 06.02.2018 (Annexure P-1) whereby application filed by the petitioner under Order 14 Rule 5 read with Section 151 of the Code of Civil Procedure, 1908 (in short 'CPC') for framing of additional issues (proposed in the application) has been dismissed.

Counsel for the petitioners has submitted that Rajinder Kumar Goyal son of Sh. Jagan Nath filed an application for eviction under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 from the premises detailed in head-note of the petition (Annexure P-2). The petitioners (respondents therein) filed the written statement/reply raising a plea that they do not know if the petitioner has become exclusive owner of the said shop as nobody including the petitioner or any other legal heirs of Sh. Jagan Nath has ever informed or given any proof/notice of his or her ownership of the said shop. Therefore, exclusive rights of the petitioner

over the disputed shop are a matter of record and proof to be given by the petitioner. A similar plea was raised in para 1 of reply on merits. It is argued with vehemence that as the petitioners have raised issue with regard to exclusive ownership of the respondent/petitioner of the demised shop, issues proposed in the application filed by the petitioner are liable to be framed and determined on the basis of evidence to be adduced by the parties. In support of his contention, he has referred to judgment of this Court **Bala Devi Vs. Fateh Chand Jain and others, 1994(2) RCR (Rent) 213.**

I have heard counsel for the petitioners, perused the paper-book particularly application for eviction (Annexure P-2), reply thereto (Annexure P-3) application for framing of additional issues (Annexure P-4), reply thereto (Annexure P-5) and the order impugned but find that the present petition is not meritorious and liable to be dismissed.

The petitioners in para 4 of the preliminary objection have raised the plea as pointed out by counsel for the petitioners. However, in para 1 of reply on merits, it has been averred, reads as follows:-

“....It is submitted that petitioner is the son of original landlord but the respondents have no knowledge if the said Sh. Jagan Nath has left behind any more legal heirs who may claim themselves to be the landlord of the shop in question. As such petitioner is one of the landlords of the shop in dispute. After the death of their father Gurbux Singh, respondents have inherited the tenancy rights in the shop in dispute under Sh. Jagan Nath, Sh. Jagan Nath has since died.

The respondent has never been informed by any of his legal heirs about their inheritance of the deceased Sh. Jagan Nath.”

Perusal of the aforesaid extract leaves no manner of doubt that petitioners/respondents have not disputed Sh.Jagan Nath (since deceased) to be their landlord and said Jagan Nath having passed away. It is also not denied that the respondent/petitioner is one of the sons of Jagan Nath. They have also candidly admitted that respondent is one of the landlords of the shop in dispute. Under the circumstances, there was no question of framing an issue with regard to existence of relationship of landlord and tenant between the parties. As per the settled position in law, a tenant cannot raise an issue qua ownership of the property in question.

The judgment in **Bala Devi's case** (supra) has got no bearing on the facts of the case in hand. In the said case, Bala Devi and others filed an application for ejectment on the premise that property in question had been let out to respondent No.1 by their predecessor Bishamber Dayal on August 1, 1981. The tenants inter alia pleaded that they took the premises on rent from Lala Kanshi Ram and it was not let out to them by Bishamber Dayal. It was also pleaded that rent up to December 1986 had been paid to Lala Kanshi Ram. In the given circumstances, it was held that there is a dispute between the parties with regard to existence of relationship of landlord and tenant. Therefore, a specific issue is required to be framed in this regard to be determined on the basis of evidence to be adduced by the parties. However, in view of the discussion made hereinbefore, as the petitioners have not disputed the relationship of landlord and tenant and admitted the respondent/petitioner to be one of the

landlords of the property in question, the Rent Controller has rightly rejected application of the petitioners for framing of additional issues.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine. However, nothing stated hereinbefore shall be construed as an expression of opinion on merits of the case.

MARCH 1, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned

:

yes/no

Whether reportable

:

yes/no