

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.2057 of 2017(O&M)

Ranjna Mahajan and another .. Petitioners

vs.

Chhavi Ahluwalia and others .. Respondents

and

CR No.2058 of 2017(O&M)

Akansha Mahajan .. Petitioner

vs.

Chhavi Ahluwalia and others .. Respondents

Date of decision: October 25, 2018

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present:- Mr.Vikas Bahl, Sr.Advocate with
Mr.Nitesh Garg, Advocate for the petitioners.

Mr.Sumeet Mahajan, Sr.Advocate with
Mr.Amit Kohar, Advocate for the respondents.

Harinder Singh Sidhu, J.

This order shall dispose of two Civil Revisions, referred to above as they arise out of a common order of the Appellate Authority, Chandigarh, whereby, it dismissed two appeals filed by the tenants against the order of the Rent Controller. There were three tenants in the ejectment petition. They filed two separate appeals against the order of the Rent Controller which were disposed of by the impugned order.

The facts are being taken from Civil Revision No.2057 of 2017.

The tenants Ranjana Mahajan and Deepti Mahajan (widow and

daughter of late Jeet Mahajan) have filed the present revision petition impugning the order dated 30.10.2014 of the learned Rent Controller, Chandigarh, whereby, the eviction petition filed by their landlords was allowed. Also challenged is the order dated 16.2.2017 of the Appellate Authority, Chandigarh, whereby, their appeal was dismissed.

In this order the landlords would be referred to as the 'petitioners' and the tenants as the 'respondents', as per their status in the eviction petition.

The petitioners had filed the petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (for short 'the Act') for ejectment of the respondents from the tenanted premises i.e. SCF No.20 (excluding its *Barsati* portion), Sector-11-D, Chandigarh. It was pleaded that one Hargian Singh Ahluwalia son of late Shri Daulat Ram was the owner of the said Shop-cum-Flat. He had let out the shop cum flat excluding the Barsati portion to Jeet Mahajan more than 35 years ago. Jeet Mahajan expired in 2008 leaving behind respondent No.1, his widow and respondents No.2 and 3, his daughters as his legal heirs. Hargian Singh Ahluwalia had three daughters and no son. His wife had expired long ago. His daughter Suchi Ahluwalia is married and settled in Pune. He died on 21.10.2008 leaving the two petitioners and their sister Suchi Ahluwalia as his only legal heirs and owners of the SCF in question. Both the petitioners are unmarried. Their father was initially a Transport Contractor. About three years before his death, he became bed-ridden due to some illness. During his life-time, he was living in a rented accommodation at Gurukul Kangri (Kankhal). He had no other residential or commercial property except his share in a dilapidated ancestral house at Safidon, District Jind.

Petitioner No.1 is M.Com and petitioner No.2 is an M.B.A. After the death of their father the petitioners had no interest to live in Gurukul Haridwar. Their nearest relation is their father's elder brother, who is a practicing Advocate at Chandigarh. It was pleaded that the petitioners had decided to shift to Chandigarh to be close to their uncle. They had decided to set up a shop for the sale of books and periodicals and also set up a Consultancy Service. The rented premises being located in a posh sector was an ideal place for the intended purpose. It was also pleaded that the respondents were in arrears of rent.

The plea of the tenants-respondents was that the eviction petition was not maintainable as only partial ejectment had been sought by the petitioners. Ejectment of the respondents had not been sought from the Barsati on the top floor of the SCF, though it was a part of the tenanted premises and was in the possession of the respondents as tenants. The bona fide need of the petitioners was also questioned. It was stated that the petitioners only intended to increase the rent. It was pleaded that petitioners No.1 and 2 were of marriageable age, being aged about 27 and 28 years, respectively. They would soon get married and shift to their matrimonial homes. It was pleaded that petitioner No.1 was running a well-established private coaching centre at Haridwar. Petitioner No.2 was employed in the Managerial cadre in the ICICI Bank at Haridwar. Petitioners were also running a flourishing guest house in their building at Haridwar. Their maternal uncles along with their families were residing at Haridwar and there was no need for them to shift to Chandigarh.

On the pleadings of the parties the following issues were

framed by the learned Rent controller:-

- “1. *Whether there exists a relationship of landlord and tenant between the parties? OPP*
2. *Whether the petitioners require the premises in question for their own use and occupation? OPP*
3. *Whether the respondents are in arrears of rent since 1.2.2009? OPP*
4. *Whether the rate of rent between the parties for the month of December, 2008 is at the rate of Rs.12,000/- ? OPP*
5. *Whether the present ejectment petition is not maintainable? OPR*
- 5A. *Whether the respondents are tenants in the whole premises and 2nd floor is the part of the tenancy and is in use and occupation of the respondents as tenants? OPR*
- 5B. *If issue No.5A is proved, whether the present petition for partial eviction of the demised premises is maintainable? OPR*
6. *Whether the petition has been filed with malafide intention? OPR*
7. *Relief.”*

To prove their case, petitioner No.1 Chhavi Ahluwalia appeared as PW1 and reiterated the contents of the petition. Petitioner No.2 Ruchi Ahluwalia appeared as PW2. The petitioners also examined Om Parkash as PW3, who stated that he had been working in the Haryana Police Department as Head Constable in the CID Branch. At the time of his retirement, he was posted at Jind. Before that, he remained posted at Panchkula. As he belonged to the same village as the father of the petitioners, he was permitted by their deceased father to occupy the Barsati portion of the SCF. He had lived there from 1979 to 1999. He denied that the Barsati had ever been let out to the respondents.

his business in the adjoining SCF No.19, Sector-11D, Chandigarh. He deposed that the respondents were in possession and occupation of all the three stories of the SCF in question. He never saw any person other than the respondents occupying the rooms on the Barsati portion in the last thirty years. RW3 Yogender Kumar resident of SCF No.27, Sector 11-D also deposed that the whole of SCF was on rent with the respondents. RW5 Vivek Wahi a resident of House No.736, Sector 11-A also deposed on similar lines. Respondents No.2 and 3 appeared as RW6 and RW4.

The Ld. Rent Controller held that the petitioners had been able to prove that they required the demised premises for their bona fide use and occupation and that the respondents have failed to lead any evidence which raised any doubt about the requirement of the petitioners. The paternal uncle of the petitioners was a practicing advocate at Chandigarh. Both the petitioners were well-educated. There was nothing unusual in their plan to start a business at Chandigarh. The mere fact that they were of a marriageable age, could not be considered a hurdle in their starting business at Chandigarh. The issue of non-payment of rent was held to have become infructuous as the respondents had paid the rent, which was provisionally assessed. Regarding the objection of the respondents that the petition was not maintainable as only partial eviction from the demised premises had been sought the learned Rent Controller held that as the tenancy was an oral one, there was no document to prove whether the Barsati portion was also a part of the tenancy. The evidence of PW3 Om Parkash was held to be insufficient to prove that the Barsati portion was excluded from the tenancy as no witness from the concerned gas agency was examined to prove that a gas connection Mark 'A' had been issued to him at

the address of the premises in question and no official from the department of Om Parkash was produced to prove that during the period 1979 to 1999, he had furnished the address of the SCF to the Department, But the learned Rent Controller held that if the Barsati portion had actually been let out to the respondents, there was no reason for the petitioners to have left out the Barsati portion from their eviction petition. It was concluded that it could be safely presumed that the Barsati portion was also let out to the respondents.

Two appeals were filed against the order of the Rent Controller. Rent Appeal No.428 of 12.12.2014 was filed by Akanksha Mahajan respondent No.2 in the eviction petition. Rent Appeal No.393 of 1.12. 2014 was filed by Mrs. Ranjana Mahajan and Deepti Mahajan, respondents No.1 and 3 in the eviction petition. Both these appeals were dismissed by learned Appellate Authority, Chandigarh by a common order. The bona fide need of the petitioners was held to be proved. It was held that from the evidence of PW3 Om Parkash, it was clearly established that the petitioners were in possession of the Barsati portion of the demised premises, wherein, PW3 was permitted to stay for the period 1979 to 1999. It was only after the filing of the eviction petition that the respondents had forcibly occupied the Barsati portion with a view to create a defence to the claim of the petitioners.

Assailing the findings, Mr. Vikas Bahl, Ld. Senior Counsel for the tenants urged as under:

- (i) Though Issue No.5 and 5-B were decided in favour of the petitioners by the Ld. Rent Controller, Issue No.5A had been decided in favour of the respondents and against the petitioners. The petitioners had not filed any cross appeal against the finding on Issue No.5A and the

findings regarding that issue are final against them. The Ld. Appellate Authority had also affirmed the findings of the Rent Controller meaning thereby Issue No.5A stands decided against the petitioner.

- (ii) The findings on Issue No.5 and 5B have been wrongly returned against the respondents. The petition was liable to have been dismissed on the ground that only partial eviction had been sought.
- (iii) The Ld. Appellate Authority being the first Appellate Forum was required to give issue wise findings on all the issues. The same not having been done its order is liable to be set aside.

Mr. Sumeet Mahajan Sr. Advocate on the other hand, defended the findings of the Rent Controller and the Appellate Authority.

Having heard Ld. Counsel, in my view, there is no merit in this revision petition.

The first argument of Mr. Bahl regarding the findings of the Ld. Rent Controller on issue No.5A as affirmed by the Appellate Authority being in favour of the respondents can be termed as being only 'technically correct' but without any substance. The issues framed have been reproduced above. Issue No. 5A was:

“ Whether the respondents are tenants in the whole premises and 2nd floor is the part of the tenancy and is in use and occupation of the respondents as tenants? OPR

The Ld. Rent Controller after considering the evidence concluded that the Barsati portion had not been rented out to the respondents and the petition was not bad for partial eviction. Thus, it appears, that it was only by inadvertence that it was wrongly recorded that Issue No.5A is decided in favour of the respondents and against the petitioners. However, based on the finding that the barsati portion was not a

decided in favour of the petitioners and against the respondents.

The Ld. Appellate Authority after independently appraising the evidence also concluded that it was established that actually the landlords were in possession of the barsati portion of the demised premises at the time of filing of the eviction petition and the respondents had forcibly taken possession thereof later. Hence, the petition was not bad for seeking partial eviction. The Ld. Appellate Authority while affirming the findings of the Ld. Rent Controller also failed to notice the error of the Ld. Rent Controller in recording that issue N.5A was decided against the petitioners.

It is well settled that a judgment or order has to be read as a whole to understand the disposition. A stray line or observation, even in the conclusions, which runs contrary to the discussion or reasoning cannot be determinative. The conclusion would necessarily have to be read in the context of what is set out in the judgment and not in isolation. In this case, the clear finding, both of the Rent Controller and the Appellate Authority, is that the barsati portion of the demised premises had not been let out to the respondents and the petition was not bad for seeking partial eviction. Hence, there is no merit in the contention of the Ld. Counsel.

Mr. Bahl then laboured hard to prove that the findings of the Rent Controller and the Appellate Authority that the barsati had not been let out to the respondents are wholly incorrect.

He referred to certain portions from the very detailed cross examination of PW2 Ruchi Ahluwalia :

“I do not now whether any Rent Agreement was executed at the time of creation of tenancy. Vol. My father used to handle all these affairs during his life time. I do not know the rate of rent at the time of creation of tenancy.It is correct that till the time of death of my father had been dealing with the property and I have no personal knowledge of terms and conditions of tenancy with the respondent.....” (p. 106-07 of the paper

book)

....I have never put up or resided in the Barsati portion in the premises in question. I do not know if any rent deed was executed with regard to the tenancy in favour of Sh. Jeet Mahajan by my father.....(p. 112)

.....I did not visit the Barsati portion this year or last year i.e., 2012 and 2011. I have not been to the premises in the year 2009 or in 2010. We had moved an application seeking permission to inspect the Barsati floor but the respondent did not allow us to enter in the premises. I did not make any police complaint in this respect nor any suit was filed by us for seeking permission to go to our portion on the barsati floor.....I do not know if my father ever resided in the barsati portion. Vol. My unclce Om Parkashji is residing in the barsati portion these days. He is not residing in the barsati ever since he retired in the year 1989 approximately. Again said not sure. (p. 113)

.....The terms and conditions of tenancy were not settled in my presence as I was not born at that time. It is correct that I do not know the terms and conditions of tenancy between my father and the respondent. (p.115)

.....It is correct that we have no documentary proof showing our possession over the barsati portion i.e., ration card, voter card, telephone number and gas connection etc. (p. 117)”

The following extracts from the cross examination of PW1 Chhavi Ahluwalia were referred to :

“.....It is correct that I have not stayed in the barsati floor with my father. However I visited the same with him. There is only one room on the barsati floor. The said room on the right side. It is correct that there was no gas connection or telephone connection on the barsati floor in the name of our family members. My father used to stay on the barsati floor and used to regularly visit the barsati floor during his life time. There was no necessity for any gas connection to stay to reside on the barsati floor. Vol. My father used to reside with our uncle Om Parkash on the barsati floor as such there was not requirement of separate gas connection.(p. 121 of the paper book)

.....It is correct that the demised premises was let out to Jeet Mahajan about 36 years before. I do not know whether if there was any rent agreement as the same was managed by my father during his life time. I do not know whether the entire property was let to Sh. Jeet Mahajan. I was not even born at that time. It is correct that my father was managing the entire property till his death on 21.10.08.....(p. 124)

...It is wrong to suggest that Om Parkash never resided in the barsati portion from 1979 to 1999. At present I am not in a position of any other proof except Mark A to show that Om Parkash was residing in the barsati portion of demised premises.I have never stayed in the said barsati floor. My father used to visit the barsati portion. I do not know whether my father stayed over night in the said barsati floor.(p. 127)”

He then referred to the cross examination of PW3 Om Parkash Head Constable Haryana Police, a family friend of the father of the petitioners from the same village Safidon, Distt. Jind who according to the petitioners had stayed in the barsati portion from 1979 to 1999 when he was posted at

Panchkula. He stated that he had not attached any proof regarding his

residence on the barsati portion of the demised premises. He stated that he had given information to the police department that he was living in the barsati portion but he had not attached any proof regarding the same. He admitted that he did not have any entry in his service record showing his residence at the Barsati floor of the premises from 1979 to 1999.

As against the aforesaid Mr. Bahl stated that the tenancy of the respondents over the entire SCF 20, Sector 11 including the barsati portion was proved by the deposition of RW2 Sunil Gupta, who was running his business in the adjoining SCF No.19, Sector-11D, Chandigarh. He deposed that the respondents were in possession and occupation of all the three stories of the SCF in question and that he never saw any person other than the respondents occupying the rooms on the Barsati portion in the last thirty years. RW3 Yogender Kumar resident of SCF No. 27, Sector 11-D also deposed that the whole of SCF was on rent with the respondents. RW5 Vivek Wahi, a resident of House No. 736, Sector 11-A also deposed on similar lines. Respondents No.2 and 3 appeared as RW6 and RW4 and deposed that the entire premises was rented to them.

It is well settled that the scope of interference with findings of fact in revisional jurisdiction is limited only to satisfying about the legality or propriety of the impugned decision and not to exercise power as an Appellate Court to re-appreciate evidence to come to a different conclusion.

The extracts from the cross examination of PW 1, PW2 and PW 3 referred to by Mr. Bahl are selective extracts. If their evidence is read in entirety the PWs are very clear that the barsati portion which consisted of one room and a store had not been rented out to the respondents. In fact, in

the aforesaid extracts from their cross examination PW 1 and PW2 are very

candid in admitting that the premises had been rented out to the respondents before their birth, they were not aware of the terms of the rent agreement, that during his life time it was their father who managed the affairs and received the rent. It was only after their father's death on 21.10.2010 that the responsibility for managing the affairs fell on them. They categorically state that the barsati portion was in their possession, their father used to visit the barsati portion and had put a lock on the said room and the keys thereof were with them.

The onus to prove this issue was on the respondents. In addition to their own oral evidence, the respondents have only relied on the oral testimony of shop keepers of two adjoining shops and a resident of Sector 11 who stated that the entire SCF was in the possession of the respondents and they had not seen any other person residing in the barsati portion.

If in these circumstances, the Ld. Rent Controller and the Appellate Authority have concluded that barsati portion had not been let out to the respondents, it cannot be said that the finding is perverse or illegal warranting interference in revision.

The next argument of Mr. Bahl that the order of the Appellate Authority cannot be sustained as it has not recorded issue wise findings as warranted under Order 41 Rule 31 of the Code of Civil Procedure also cannot be upheld.

Firstly, it is settled that the Civil Procedure Code, as such, does not govern the proceedings under the Act except to the limited extent provided for under sections 16 and 17 thereof. Section 16 is concerned with

deals with *enforcement of orders*. (*Ram Dass Vs. Sukhdev Kaur 1981 P& H. 301*).

Secondly, as held by Hon'ble Supreme Court in *G. Amalorpavam v. R.C. Diocese of Madurai, (2006) 3 SCC 224*, non-compliance with the provisions of Order 41 Rule 31 may not vitiate the judgment and make it wholly void, if there has been substantial compliance with it. Where the appellate court has considered the entire evidence on record and discussed the same in detail, come to any conclusion and its findings are supported by reasons even though the point has not been framed by the appellate court there is substantial compliance with the provisions of Order 41 Rule 31 CPC and the judgment is not in any manner vitiated by the absence of a point of determination.

In the instant case, the Appellate Authority has considered the evidence and the contentions of the parties and given reasons for its findings affirming those of the Rent Controller. So the it cannot be held that its order is vitiated on this count.

The petitioners are real sisters. They are both unmarried. There is no male member in their family. They were residing with their father at Haridwar. Petitioner No.2, an MBA, initially took up a job at Haridwar. Thereafter, she got a job on contract basis at Gurgaon. Petitioner No.2 is still residing at Haridwar. After the death of their father on 21.10.2008 they want to shift to Chandigarh to be near their paternal Uncle (father's brother) who is their closest relative and start a business of selling books and periodicals and a consultancy service in the demised premises. Except this premises they have no other property in Chandigarh. Their need was

rightly found to be bona fide and genuine.

The respondents who have by now been in occupation of the property for over four decades cannot deny the legitimate claim of the petitioners.

There is no merit in the petitions and the same are dismissed.

October 25, 2018

**(HARINDER SINGH SIDHU)
JUDGE**

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No