

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.2673 of 2018(O&M)

Date of decision: 27.07.2018

Kulbhushan @ Kulbhushan Gupta

....Petitioner

VERSUS

Ashok Kumar

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Chetan Bansal, Advocate for the petitioner.

REKHA MITTAL, J.

CM No.10826-CII of 2018

Heard.

Allowed as prayed for.

Annexures P-3 to P-5 are taken on record subject to just exceptions.

Disposed of accordingly.

CR No.2673 of 2018

The present petition directs challenge against order dated 18.01.2018 passed by the Appellate Authority under the East Punjab Urban Rent Restriction Act, 1949 (in short 'the Act') whereby appeal under Section 15 of the Act filed against the order dated 13.09.2017 passed by the Rent Controller, Ferozepur by the respondent/tenant has been allowed and petitioner/landlord has been directed to make necessary repair of the roof of shop in question within three months and in case of failure to do so, the respondent being entitled to make such repair at the cost of petitioner and adjust cost of repair in the rent payable by the respondent.

The facts relevant for disposal of present petition are that Dr. Ashok Kumar, admittedly a tenant in the shop in question since 1988 filed an application under Section 12 of the Act on the averments that on 14.04.2015, petitioner along with some anti-social elements came to the shop and threatened the respondent to vacate the same. Out of fear, respondent locked the shop. Next morning, he found the locks of the shop broken and roof top was damaged by the petitioner and his associates. He (respondent) lodged FIR No.49/15 under Sections 380, 447, 427, 506 IPC against the petitioner and his companions in police station Cantt. Ferozepur. The petitioner is in occupation of one room on the first floor. The respondent requested the petitioner to make necessary repairs in the roof or allow him to do so at the cost of petitioner and the petitioner be refrained from damaging the roof till existence of tenancy.

The petitioner filed reply controverting the material averments raised in the application. It is averred that he has been falsely implicated by the respondent in the aforesaid FIR which was got registered due to influence of the respondent and with the help of ex-member of cantonment Board who is close to local MLA. The petitioner is doing business by installing rehri at Azad Chowk Ferozepur Cantt and has five daughters out of which three are yet to be married. The petitioner wants to start business of sweets in the demised shop and has bona fide personal need of the same.

The parties were permitted to adduce evidence in view of the issues framed by the Rent Controller reproduced in para 4 of the order impugned.

Having heard counsel for the parties in the light of materials available on record, the Rent Controller dismissed the application vide

order dated 13.09.2017 that came to be challenged in appeal by invoking Section 15 of the Act. The Appellate Authority reversed the order passed by the Rent Controller and allowed the application under Section 12 of the Act in the aforesaid terms, noticed hereinbefore.

Counsel for the petitioner has submitted that the respondent has failed to adduce tangible much less cogent and convincing evidence to establish his plea that damage to roof of the shop in question has been caused by the petitioner on 14.04.2015. It is argued that with regard to alleged occurrence on 14.04.2015, FIR No.49/15 was registered in Police Station Cantt. Ferozepur on 25.04.2015 and that also after the petitioner had filed an application under Section 13 of the Act seeking eviction of the respondent on the ground of personal necessity etc. It is further argued that the respondent is guilty of leveling false imputations against the petitioner/landlord that he has caused damage to roof of the shop in question. It is further submitted that the instant petition as well as FIR lodged by the respondent is nothing but an abuse and misuse of process of law in order to put pressure upon the petitioner so that he should not pursue his remedy in law seeking eviction of the respondent.

Another submission made by counsel is that the photographs marked as exhibits to prove damage to the roof have not been proved in accordance with law. In addition, it is argued that the Court in appeal has also taken into consideration the inquiry report Ex.AZ of SHO Police Station Cantt. Ferozepur with regard to the petitioner having demolished the roof of shop in question though investigation in the FIR got registered by the respondent is still pending. It is argued with vehemence that the Court in appeal has failed to appreciate the judgment passed by the Rent

Controller and materials on record in right perspective, therefore, misdirected itself by allowing the appeal.

I have heard counsel for the petitioner, perused the paper-book particularly the order dated 13.09.2017 passed by the Rent Controller and 18.01.2018 by the Appellate Authority.

Indisputably, the respondent is a tenant in the shop in question since 1988 and tenancy in his favour was created by Bhajan Lal, father of the petitioner. The respondent is doing business of Ayurveda in the tenanted premises. The respondent appeared in the witness box to substantiate his plea that the petitioner along with his associates came to the shop in question on 14.04.2015 and threatened him to vacate the tenancy premises. He locked the shop and went away but when he came to the shop on the next morning, he found that roof of the shop has been damaged and certain articles from the shop were found missing. He got registered FIR No.49 dated 25.4.2015 under Sections 380, 447, 427, 506 IPC against the petitioner and his associates.

Counsel for the petitioner has failed to point out any material elicited in cross examination of respondent Ashok Kumar to shatter evidential value of his testimony or to prove that his testimony is not worthy of credence and reliance. The petitioner Kulbhushan Gupta examined himself to counter case of the respondent and testimony of Dr. Ashok Kumar. He tendered into evidence his duly sworn affidavit Ex.RW1/A, reiterated the facts that he needs tenancy premises for his bona fide personal use and occupation as he wants to start business of sweets shop in the name and style of Sham Mishthan and Namkeen Bhandar after

getting repaired the shop in question and the adjoining property. In his cross examination, the witness has stated to the following effect:-

"I do not know the name of the labourer who demolished the roof of the shop in question. The said labourer hired by me. It is wrong that I have deposed falsely in this regard."

The aforesaid fact brought-forth in cross examination of Kulbhushan Gupta is an implicit admission by him that he hired the labourer for demolishing roof of the shop in question. In the light of testimony of Dr. Ashok Kumar coupled with factum of lodging FIR against his landlord along with the aforesaid admission by the petitioner, it is difficult to accept contention of the petitioner that the order passed by the Appellate Authority directing the petitioner to repair roof of the shop failing which the respondent being entitled to get it repaired at the cost of petitioner warrants intervention in exercise of limited revisional jurisdiction.

So far as plea of the petitioner that the photographs Ex.A3 to A5 have not been proved in accordance with law, no such objection was raised by the petitioner when the documents were marked as exhibits. This apart, the petitioner has not denied damage to roof of the shop in question but he has disputed that the said damage has been caused by him. The photographs only show the extent of damage to the roof in question. The inquiry report Ex.AZ may not be a conclusive proof to substantiate plea of the respondent but that is a relevant piece of evidence taken into consideration by the Court in appeal. In this view of the matter, challenge to findings of the Appellate Authority for relying upon the photographs Ex.A3 to A5 and report Ex.AZ is not meritorious and liable to be rejected.

No other point has been raised.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine. However, nothing stated hereinbefore shall cause prejudice to the petitioner to pursue his remedy seeking eviction of the respondent/tenant, in accordance with law.

JULY 27, 2018
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no