

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.5225 of 2007 (O&M)

Date of decision: 25.09.2018

Vipan Sodhi and another

..... Petitioners

Versus

Kola Ram and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Sunil Chadha, Sr. Advocate with
Mr. Prateek Sodhi, Advocate
for the petitioners.

Mr. Ashish Aggarwal, Sr. Advocate with
Mr. Parunjeet Singh, Advocate
for the respondents.

ANIL KSHETARPAL, J. (ORAL)

CM-13834-CII-2018

Prayer in the application is for substituting the name of the applicants in place of landlords-petitioners. The prayer is not opposed by learned counsel for the respondent, therefore, the applicants are substituted in place of original petitioners and the application is allowed.

Learned senior counsel appearing for the applicants-petitioners submit that since the property has been transferred, therefore, he will not press the petition on the ground of personal necessity, however, he would be press this petition on the ground of subletting of the premises in question without written consent of the landlord. It will be significant to note here that respondent No.1 is a tenant whereas respondent No.2 is his brother whereas respondent No.3 is a Cooperative Industrial Society Ltd. having

tenant as its Principal Incharge.

Main Case

Landlord-petitioners are in the revision petition against the order passed by the learned Appellate Authority resulting in dismissal of the eviction petition while reversing the judgment passed by the learned Rent Controller.

The question which is required to be answered is:-

“Whether non-production of documents as demanded in the notice under Order 12 Rule 8 CPC, the Court is bound to draw adverse inference?”

It is pleaded case of the predecessor of the applicants that respondent No.1 has sublet the property in question to respondent No.2 and respondent No.2 is running a business having complete and effective control over the same. Respondent No.1 has started carrying business in sale and purchase of the fishes from the fish market. It is further pleaded case of the petitioners that respondent No.1 has also sublet the premises to respondent No.3 which is a Cooperative Industrial Society and respondent No.1 is himself an Incharge of the Society. It is further asserted that respondent No.2 is managing the aforesaid society. The allegations made in the petition were denied. Respondent No.1 further denied that he has sublet the premises to respondent No.2. Respondent No.1, however, admitted that he is also into the business of sale and purchase of the fishes in the fish market in partnership. It was further pleaded that respondent No.3, a Cooperative Industrial Society is running its business from other premises of building No.1430-XI owned by Kuldeep Singh son of Kartar Singh.

During the pendency of the petition, the landlords served a notice to the respondents demanding the following documents:-

- “1. Memorandum of Articles of Association of M/s Mattu Furniture PROD. W/s Cooperative INDI Society Ltd., Katra Sher Singh, Amritsar. The Rules & Regulations of the aforesaid Company-Original Registratin Certificate or its duly attested copy of the aforesaid Company, name of all the office bearers inclusive of Directors, Management Board etc. of this company, Account Books of this concern, Account No. and the name of the Bank where the company is maintaining the bank account. Bill Books, Accounts Books and ledgers of this concern, and copies of the income-tax returns and the orders passed thereon from the date of inception till today and permanent account number allotted by the Income Tax Authorities to this concern.*
- 2. Account Books, Bill Books, Income Tax Returns, Ledgers, bank account statement of the business carried on in the shop in question and the balance sheet w.e.f. 1.4.98 onwards till date.*
- 3. Copies of the income-tax returns individually filed w.e.f. 1.4.98 till date and copy of orders passed thereon and Income Tax Number allotted by the Income Tax Office.”*

The tenant in response, stated that since the aforesaid society is not running its business from the shop in dispute, therefore, these documents were not required to be produced.

During the evidence, the landlord summoned official from the bank where Cooperative Industrial Society has opened its account and brought on record account opening form, list of members of the society, the application for loan, accounts of the society as well as bye-laws of the society.

Learned Rent Controller ordered eviction on the ground that since on service of notice under Order 12 Rule 8, CPC, the required documents have not been produced, therefore, adverse inference is to be

drawn against the tenant and hence, liable to be evicted. However, the learned Appellate Authority after examining the evidence has reversed the aforesaid decision.

This Court has heard learned counsel for the parties 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 applicant submitted that the petitioner-landlord in order to prove the ground of subletting has produced on file Ex.AW-4, photograph to prove that the Display Boards outside the shop of respondent No.3-society has been affixed apart from of the Laxmi Furniture House which was the original trade name under which respondent No.1 was working. Hence, he submitted that it is proved that the premises has been sublet to respondent No.3. He further submitted that since the tenant-repondent No.1 when appeared in evidence has admitted that he has started the business of trading in the fish from the fish market, therefore, respondent No.1 is proved to have parted with the possession. He further submitted that once a notice was served under Order 12 Rule 8, CPC, therefore, the learned Appellate Authority wrongly refused to draw adverse inference against the tenants. He further submitted that the tenants have failed to produce any record to prove that respondent No.3-society is running its business from some other premises.

On the other hand, learned counsel for the respondent-tenant has submitted that it is necessary to prove subletting that the tenant has parted with the possession which according to him in this case is not proved. He further submitted that respondent No.3 is a cooperative society consisting of various family members and the President of the Society is tenant-respondent

No.1. He further submitted that there is no evidence that the society is running its business from the premises in dispute. He further submitted that the Appellate Authority rightly refused to draw adverse inference as Order 12 Rule 8, CPC is only a provision regarding notice given by the party to another to produce some documents. Hence, he submitted that mere non-prouduction of the aforesaid documents cannot be taken as a ground to drawn adverse inference. He further submitted that most of the documents as required in the notice under Order 12 Rule 8 have come on record through the bank official. He further submitted that from the photograph, it is no where established that the possession of the premises has been parted with. He has drawn attention of the Court to the photograph where on the front portion of the shop, board of Laxmi Furniture House has been displayed whereas a smaller board of respondent No.3 is also displayed but that itself does not prove that possession has been parted with.

In the present case, two petitioners namely Vipin Sodhi and Smt. Santosh Sodhi filed the petition. It is their pleaded case that they have purchased the property in July, 1998. It is admitted possession on the record that respondent No.1 is continuing in possession of the premises which before the purchase of the property. It has also come in evidence that respondent No.3-society came to be formed in 1992-93. It will be mentioned here that the landlord in the present case has failed to produce any evidence to show that respondent No.1-tenant has parted with the possession. All the argument of learned counsel at the most leading to a situation where the Court has to draw an adverse inference. No doubt, there cannot be any direct evidence of subletting of the premises because it is normally a secret arrangement between the tenant and sub-tenant, however, the landlord is at

least required to prove that there is parting of possession. In this case, this fact has not been proved on file. Whatever record has been produced by the landlord with respect to respondent No.3-society, that only proves that the society is also operating from the aforesaid market. In none of the documents, address of the shop in question has been mentioned. Still further, it is admitted fact that respondent No.1 is the President of the Cooperative Industrial Society. Further, a bare look on the photograph and on the reading of the evidence of the photographer, it is apparent that there are two display boards affixed outside the shop. The main board is depicting that original firm is carrying on its business in continuity whereas small board which is of Cooperative Industrial Society has also been affixed. That itself cannot be taken as an evidence of the fact that the possession has been parted with respondent No.1. While filing reply, the tenant had specifically given the address from where respondent No.3 is carrying on its business. The landlord has not made any attempt to prove that the plea taken by the tenant is incorrect. It has come in evidence that the society is carrying on its business from the premises which is situated opposite side of the shop in question. In such a situation if a small display board has been affixed outside the shop, that itself is not sufficient to prove that there is any parting of possession.

Now the stage is set for considering the question of law.

“Whether non-production of documents as demanded in the notice under Order 12 Rule 8 CPC, the Court is bound to draw adverse inference?”

Order 12 Rule 8, CPC is extracted as under:-

“Notice to produce documents. - Notice to produce documents

shall be in Form No.12 in Appendix C, with such variations as circumstances may require. An affidavit of the pleader, or his clerk, of the service of any notice to produce, and of the time when it was served, with a copy of the notice to produce, shall in all cases be sufficient evidence of the service of the notice, and of the time when it was served.”

On careful reading of Order 12 Rule 8, it is apparent that such notice can be served by one party to the other to produce documents. This notice is not served through the Court. There is another procedure prescribed in the Code of Civil Procedure under Order XI wherein during the pendency of the suit, the parties can file an application for discovery by interrogatories or for admission and denials of the documents. Rule 5 of Order XI further provide that an application can be moved to the Court seeking production of documents in possession and power of such party or person. The provisions of Order 11 and 12 are entirely different. Still further, in Order 12 Rule 8, only a demand is made calling upon the other side to produce certain documents. Relevance of the documents sought to be got produced is to be examined by the Court. Hence, the provisions of Order XI and XII with regard to production of documents and effect of non-production thereof is entirely on a different footing. As noticed in the present case, the respondent while replying to the application, has stated that the aforesaid documents are not relevant for the decision of the case. Still further, most of the documents which have required to be produced through notice under Order 12 Rule 8 have been produced in Court through the bank official.

Hence, the Appellate Authority has rightly refused to draw adverse inference against the respondent-tenant.

In the present case, hence, question is answered in favour of the

respondent-tenant.

It has come in evidence that the business of trading in fishes is only seasonal normally in Northern India. Still further, it has come in evidence that the Cooperative Industrial Society had come into existence in the year 1991-92 whereas the landlord purchased the shop in the year 1998. The landlord has failed to prove that the possession of the premises has been parted with in favour of respondent No.2 as alleged in the petition.

It has come in evidence that respondent No.1 is doing furniture business under the name and style of Laxmi Furniture House since 1974. Bimal Kumar RW-1, the adjoining shop keeper has been examined who has also stated that respondent No.3 is not carrying on its business from the shop in question and it is respondent No.1 who is carrying on business from the premises.

In view of the discussion made above, this Court does not find any good ground to interfere in the findings of fact arrived at by the learned Appellate Authority.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

Revision petition is dismissed.

25.09.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No