IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.4414 of 2011 (O&M)
Date of decision : 07.09.2018

Aninderjit Singh

...Petitioner

Versus

Kashmira Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. M.L. Sarin, Sr. Advocate with
Ms. Himani Sarin, Advocate for the petitioner.

Mr. Rahul Sharma, Advocate for the respondents.

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ANIL KSHETARPAL, J. (ORAL)

The landlord-petitioner is in the revision petition against the judgment passed by the learned Appellate Authority reversing the judgment passed by the Rent Controller, resulting in dismissal of the petition under Section 13 of the East Punjab Rent Restriction Act, 1949. Only ground on which this Court is called upon to decide the case is subletting by the original tenant namely Om Parkash in favour of Kashmira Singh-respondent No.1 herein without written consent of the landlord.

The landlord filed a petition claiming that Om Parkash was a tenant in the shop in question and he had sublet without the consent of the landlord in favour of Kashmira Singh-respondent No.1 herein. Om Parkash filed a written statement admitting that he is tenant at the rate of ₹400/- per month. However, he denied that he had sublet the shop to respondent-

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Kashmira Singh. Kashmira Singh filed separate written statement claiming that Jatinder Singh was owner of the premises and he had taken the shop on rent from Jatinder Singh 13 years back. He claimed that the rent is ₹1440/- per month and has been paid to Jatinder Singh upto 31.03.2004. Subsequently, an application for amendment was moved as the landlord pointed out in the replication that Jatinder Singh had died on 27.10.2001 and Om Parkash changed his stand and claimed that he has paid the rent to Jatinder Jit Singh @ Jatinder Singh upto 31.03.2001.

Learned Rent Controller after appreciating the evidence, ordered the eviction of the tenants from the premises in dispute particularly of Kashmira Singh. However, Appellate Authority without dealing with the reasons given by the learned Rent Controller, reversed the judgment of the Rent Controller. That's how this revision has come up before this Court.

Before detailed arguments are dealt with, certain important facts, need to be noticed. Bhagwant Kaur, Grandmother of the petitioner-Aninderjit Singh and Jatinder Jit Singh @ Jatinder Singh was owner of Navyug Palace including the shop in question. It is claimed that the shop in dispute alongwith adjoining shop towards eastern side were let out to Om Parkash at the rate of ₹400/- per month. It may be noted that Bhagwant Kaur died in the year 1969 bequeathing through a testament, property in dispute in favour of Aninderjit Singh (petitioner) and late Sh. Jatinder Jit Singh, who died on 27.10.2001. Aninderjit Singh filed petition on 19.04.2004 against Om Parkash and Kashmira Singh on following grounds:-

1. Non-payment of rent since 01.04.2004.
2. Om Parkash has sublet the shop in question in favour of Kashmira Singh without written consent.

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Om Parkash appeared through counsel on 21.07.2004 and tendered the rent which was accepted by the landlord under a protest being short and invalid. Efforts were made to serve respondent No.2 but he kept avoiding service. Ultimately, for service of respondent No.2, Local Proclamation was ordered and respondent No.2 appeared through counsel on 21.01.2005. The case was adjourned on the ground that efforts are being made for compromise which did not fructify. As notice above, Om Parkash filed the written statement admitting the tenancy but disputed the fact that he has sublet the shop in question in favour of Kashmira Singh.

On the other hand, Kashmira Singh filed separate written statement asserting that he is tenant under Jatinder Jit Singh @ Jatinder Singh for the last 13 years and has paid the rent upto 31.03.2004. Once in the rejoinder, falsehood in the stand of Kashmira Singh was exposed by the landlord-petitioner, he changed his stand and filed amended written statement claiming that he has paid the rent to Jatinder Singh upto 31.03.2001. It may be noted that Kashmira Singh filed a civil suit for permanent injunction against the petitioner-Aninderjit Singh. It was pleaded by him that he had taken the shop on rent from Jatinder Singh 13 years back and he was running liquor vend (L-14A) alongwith Tavern/Bar by making a small partition with the wooden frame in the shop itself.

Kashmira Singh when appeared in the evidence, he deposed that he had taken the shop on rent in May, 2002 and he had stopped paying the rent from 2004 as Jatinder Jit Singh had died and no one had come to accept the rent.

Thus, it is apparent that Kashmira Singh-respondent No.1 herein has taken four different stand. In the original written statement, he had taken a

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stand that he had taken the shop on rent from Kashmira Singh 13 years back and paid the rent upto 31.03.2004 in the written statement dated 29.11.2005. Thereafter by filing the amended written statement dated 17.04.2007, took a stand that he had taken a shop on rent from Jatinder Singh 13 years back but he has paid the rent upto 31.03.2001. This stand was taken only when it was brought to the notice by the landlord that Jatinder Jit Singh had died on 27.10.2001. In the suit for injunction, which was filed by Kashmira Singh, he had taken a stand that he is running a liquor vend (L-14A) alongwith Tavern/Bar. However, when appeared in the evidence, he took a stand that he took the shop on rent in May, 2002, in other words, just less than 2 years before filing of the petition as petition is dated 19.04.2004 and he has stated that he has stopped paying the rent from 2004 as Jatinder Jit Singh had died. Hence, it is apparent that Kashmira Singh had taken totally different stand at various stages of the litigation.

Still further, Kashmira Singh when appeared in evidence, admitted that after the year 2003-2004, no liquor vend has been allotted in his individual name, however, he tried to explain that licencee of the liquor vend permits him to run Tavern. Still further, it has come in evidence that Kashmira Singh has never been allotted either any liquor vend in the year 2007 or any Tavern which is known as licence L-52 as per the Punjab Excise Act, 1914 and the Rules framed thereunder.

As noted above, Rent Controller after assigning these reasons ordered the ejectment. However, learned Appellate Authority reversed the judgment passed by the learned Rent Controller.

It is apparent from the reading of the judgment passed by the learned Appellate Authority that the detailed reasons given by the Rent

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Controller while allowing the rent petition have not been dealt with or found wrong after critical analysis thereof. Although, this is sufficient to reverse the judgment of the Appellate Authority, however, there are another reasons also which prove that the judgment passed by the Appellate authority is suffering from perversity. Learned Appellate Authority has drawn adverse inference against the landlord on the ground that heirs of Om Parkash, the original tenants who had died, have not appeared in evidence.

Learned Appellate Authority had overlooked the different stands of Kashmira Singh during the course of trial. The Appellate Authority further committed error by recording that it was for Aninderjit Singh, landlord to prove that he was owner of the shop in dispute and it was leased to Om Parkash and further sublet in favour of Kashmira Singh without written consent. It may be noted that Aninderjit Singh had not only asserted in the petition that the shop in question has been wrongly sublet without written consent of the landlord but had also supported this fact by appearing in the evidence. Subletting is secret arrangement between the tenant and the sub-tenant. Once Kashmira Singh admitted that he is in possession, he was required to prove that he had taken the shop in question on rent from Jatinder Singh. Apart from bald assertions in the written statement and in deposition, no document was produced to prove that he was direct tenant under Jatinder Jit Singh. The Appellate Authority further erred in drawing adverse inference against the landlord on the ground that Aninderjit Singh did not file petition for ejectment for 15/17 years. It may be noted that as per Section 13(2)(ii)(a) of the East Punjab Urban Rent Restriction Act, 1949 before tenant sublets to another, a written consent of the landlord is necessary. Section 13(2)(ii) of the East Punjab Urban Rent Restriction Act, 1949, is extracted as under:-

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> *"**13. Eviction of tenants** (1) xxx xxx*
>
> *(2) (ii) that the tenant has after the commencement of this Act without the written consent of the landlord -*
>
> *(a) transferred his right under the lease or sublet the entire building or rented land or any portion thereof; or*
>
> *(b) used the building or rented land for a purpose other than that for which it was leased, or"*

Therefore, Appellate Authority was even wrong by recording that since the petition was filed after 15/17 years, therefore, there is acquiescence. No doubt, Kashmira Singh had produced the assessment register Ex.R1 to prove that he is recorded as a tenant in the assessment register of the Municipal Committee, however, the Court has overlooked that as per the Municipal record, the owners are Aninderjit Singh and Jatinder Jit Singh. Still further, the assessment register is of the year 2001-2002. No evidence has been produced to prove that Kashmira Singh was inducted as tenant 13 years before filing of the petition as claimed by him.

In view of the aforesaid discussion, the judgment passed by the learned Appellate Authority is set aside and that of the Rent Controller is restored. Revision petition is allowed with costs of ₹50,000/- payable by Kashmira Singh to the landlord towards costs of the revision petition.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

07.09.2018 **(ANIL KSHETARPAL)**
Pawan **JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No

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