

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.4572 of 2018 (O&M)
Date of decision:29.11.2018.

Vinod Kumar

...Appellant

Versus

Chanderwati alias Suman Devi and another

....Respondents

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Anil Kumar Sharma, Advocate for the petitioner.

Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Pradeep Sharma, Advocate and
Mr. M.S. Saini, Advocate for respondent No.1.

LISA GILL, J.

The petitioner/tenant is aggrieved of judgment dated 12.04.2018 passed by Appellate Authority, Faridabad, whereby judgment dated 18.03.2016 passed by Rent Controller, Faridabad has been set aside. Rent petition filed by the respondent/landlord was dismissed but the learned Appellate Authority while setting aside the said decision has ordered eviction of the petitioner/tenant from the demised premises.

Brief facts as narrated in the petition filed by the landlord under Section 13 of Haryana Urban (Control of Rent & Eviction) Act, 1973 are that the demised premises i.e. the shop in question was taken on lease on 01.01.1973 by the present petitioner Vinod Kumar on a monthly rent of Rs.125/- which was later enhanced to Rs.145/-. Earlier, a petition seeking eviction of the petitioner/tenant filed by respondent No.1 was allowed by the learned Rent Controller on 08.06.1984. Appeal preferred by the present petitioner was also dismissed on 06.12.1984. Revision petition preferred by the petitioner was dismissed by this Court on 25.01.1985. However, the matter was compromised during the pendency of Special Leave Petition before Hon'ble the Supreme Court. Petitioner undertook to pay rent at the

rate of Rs.600/- per month w.e.f. 01.12.1985. Present petition was filed on the ground that the petitioner failed to pay arrears of rent w.e.f. 01.09.2008 to 30.04.2011 besides having sublet the demised premises without consent of the landlord to respondent No.2/Anil Kumar, who was averred to be running his timber business under the name and style of 'Mittal Timbers, Sihi Gate, Ballabgarh'. Personal bonafide necessity was also pleaded besides stating that the demised premises were unsafe and unfit for human habitation. Arrears of rent were deposited by the petitioner. Thus, the said ground no longer survived. Learned Rent Controller dismissed the petition while concluding that the landlord failed to prove subletting of the premises or that they were unsafe and unfit for human habitation. It was observed that the photographs produced by the landlord, though admitted by the petitioner cannot be relied upon as there was non-compliance of Section 65(B) of the Indian Evidence Act ('Evidence Act' for short).

Appeal was filed by the landlord, which was allowed. Learned Appellate Authority ordered eviction of the petitioner from the demised premises on the ground of the premises being sublet to respondent No.2. It is observed by learned Appellate Authority that the petitioner/tenant admitted photographs of the demised premises which reflected timber business being carried on therein. Therefore, subletting of the premises to the petitioner's brother was concluded to have been proved.

Aggrieved therefrom, present petition has been filed.

Learned counsel for the petitioner vehemently argues that subletting of the premises has wrongly been concluded to be proved on the basis of photographs placed on record by the landlord. It is contended that the certificate in terms of Section 65-B of the Evidence Act has not been produced. Therefore, the said photographs are clearly inadmissible in

evidence. Learned counsel relies upon the judgment of Hon'ble Supreme Court passed in Anvar P.V. Vs. P.K. Basheer and others, 2014 (10) SCC 473. Moreover, so called admission on the part of the present petitioner is not relevant as the said photographs are not proved on record. It is, thus, prayed that the present revision petition be allowed and impugned judgment dated 12.04.2018 passed by learned Appellate Authority, Faridabad be set aside and judgment dated 18.03.2016 passed by learned Rent Controller, Faridabad be upheld.

Learned counsel for respondent No.1/caveator refutes the said averments while submitting that both the learned Courts below have arrived at a logical conclusion after proper appreciation and consideration of the evidence on record.

I have heard learned counsel for the parties and have gone through the file with their able assistance.

Relationship between the petitioner and respondent No.1 as well as the earlier litigation between the parties is not in dispute. It is not denied by learned counsel for the petitioner that the photographs in question were admitted by the petitioner during his cross examination. Argument raised by learned counsel for the petitioner that the said photographs are not relevant because certificate in terms of Section 65-B of the Evidence Act has not been placed on record is devoid of any merit. Admittedly, respondent/landlord placed on record photographs of the shop i.e. Ex.PW1/1 to PW1/19. The said photographs were taken by Gopi Chand, who was duly examined as PW1. PW4 Rakesh Bhatia, Structural Engineer/ Valuer, who prepared the report regarding the status of the structure of the tenanted premises, proved photographs PW4/2 to PW4/5 taken by him. All these photographs reflect the running of a timber store and timber cutting workshop in the said premises

and not Aggarwal Coal Depot. Respondent Vinod Kumar, RW1 in his cross-examination has candidly admitted the said photographs, while paradoxically stating that board of Mittal Timbers is not there. The Hon'ble Supreme Court in Shafhi Mohammad Vs. The State of Himachal Pradesh, SLP (Criminal) No.2302 of 2017 decided on 30.01.2018, has clearly held that furnishing of a certificate in terms of Section 65(B) of the Evidence Act being procedural can be relaxed by Court, wherever interest of justice so justifies. Though the case of Shafi Mohd. (supra) dealt with a situation where the party in question was not in possession of the device from which the document is produced, it is specifically observed that requirement of certificate under Section 65 (B) of the Evidence Act is procedural and not mandatory. In the present case, respondent, RW1 has admitted the photographs in question. Therefore, it would be a travesty of justice to hold that even though the photographs are admitted, they cannot be relied upon in the absence of a certificate in terms of Section 65(B) of the Evidence Act.

There is clear and cogent evidence on record to prove that the premises in question are being used for timber business and not coal business as alleged by the petitioner. Business carried on by the petitioner/tenant under the name and style of 'Aggarwal Coal Depot' was admittedly closed in the year 2009 and allegedly started afresh under the name and style of 'Krishna Enterprises'. Learned counsel for the petitioner sought to rely upon the income tax returns of Krishna Enterprises for the Assessment Year 2010-2011 (Ex.P24), but the same is of no avail as this income tax return does not in any manner indicate business being carried on by the petitioner from the premises in question. Similarly, there is no merit in the argument raised by learned counsel for the petitioner that the landlady herself did not step into the witness box, thus, she is not entitled to any relief.

This is so for the reason that PW2 Sant Parkash Nangia had duly testified before the learned Rent Controller. He is admittedly the husband of landlady Suman Devi. He was fully aware of the facts of the case and was competent to depose on behalf of his wife on the basis of personal knowledge. Therefore, the petitioner cannot derive any benefit on account of landlady not testifying herself. Learned Appellate Authority has rightly set aside the judgment and decree dated 18.03.2016, whereby the petition under Section 13 of Haryana Urban (Control of Rent and Eviction) Act, 1973 was dismissed. The respondent/landlady has indeed succeeded in substantiating her case on the basis of the evidence on record.

No other argument has been addressed.

Learned counsel for the petitioner is unable to point out any illegality, perversity or infirmity in the impugned judgment dated 12.04.2018 passed by learned Appellate Authority, Faridabad which calls for interference by this Court in exercise of its revisional jurisdiction.

Petition is accordingly dismissed with no order as to costs.

(LISA GILL)
JUDGE

29.11.2018
Ishwar

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No