

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CR No. 5000 of 2018(O&M)
Date of Decision:14.11.2018**

Suraj Mehta

.....Petitioner

Versus

Prem Lata and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Abhimanyu Singh, Advocate
for the petitioner.

LISA GILL, J.

Petitioner is aggrieved of order dated 01.04.2015, passed by the learned Rent Controller, Bhiwani, as well as order dated 12.07.2018, passed by the learned Appellate Authority, Bhiwani.

Eviction of the petitioner, who is a tenant in the demised premises i.e. a shop as detailed in petition under Section 13 of the Haryana Urban Control of (Rent and Eviction), Act 1973 (for short 'Act') filed by respondents no.1 to 4 has been ordered by the learned Rent Controller, Bhiwani. Learned Appellate Authority, Bhiwani, has upheld the eviction of the petitioner from the said premises. Eviction of the petitioner was directed primarily on the ground of subletting of premises by the tenant to Arjun-respondent no. 5 in the present petition (and respondent no.4 before the learned Rent Controller).

Brief facts necessary for the adjudication of the case are that petition under Section 13 of the Act was filed by respondents no.1

(respondents no.2 to 4 being substituted as petitioners on 18.08.2012 being subsequent purchasers) seeking eviction of the petitioner from the shop as fully detailed in the petition. It was pleaded that the shop was let out by Shiv Rattan, father of Pawan Kumar, to Vasudev and Tara Chand, father of petitioner-Suraj Mehta and Shekhar Mehta-respondent no.6 on rent at the rate of ₹300/- per month exclusive of taxes. After the demise of his father Shiv Rattan, the petitioner-Pawan Kumar, stepped into his shoes. Eviction of the present petitioner and his brother was sought on the ground that they are chronic defaulters and have not paid the rent for a period of 78 months from 18.07.2001 to 17.01.2007. Moreover, the premises in question were alleged to have been sub let to Arjun-respondent no.4 in the rent petition and respondent no.5 in the present petition.

Petition was contested by Vasudev, the present petitioner and his brother. Petition was resisted on various grounds. It was denied that the premises were ever sub let or that rent was not paid. The person to whom the premises were allegedly sub let, namely Arjun, did not appear despite service and was proceeded against *ex parte*.

From the pleadings of the parties, following issues were framed by the learned Rent Controller, Bhiwani:-

1. Whether the respondents are liable to be evicted from the demised premises on the grounds mentioned in the petition?OPP
2. Whether the petition is not maintainable in its present form?OPR
3. Whether the petitioner has no cause of action as well as *locus standi* to file the present petition?OPR
4. Whether the respondents are entitled to counter claim i.e.

refund of excess rent tendered by them?OPR

5. Relief.

During the pendency of the petition, subsequent purchasers moved an application for substitution on the ground of having purchased the property from the original owner-landlord. The said application was allowed by the learned Rent Controller on 18.08.2012.

Learned Rent Controller, Bhiwani, on consideration of facts and circumstances of the case and evidence on record did not find any merit in the ground regarding non-payment of rent. However, eviction of the petitioner was directed on the ground that sub letting of the premises to respondent-Arjun was duly proved on record. Learned Rent Controller *inter alia* relied upon the report Ex.P-3 submitted by the Local Commissioner appointed by the Court.

Appeal filed by the present petitioner was also dismissed by the learned Appellate Authority, Bhiwani, vide order dated 12.07.2018.

Aggrieved therefrom, present petition has been filed.

Learned counsel for the petitioner vehemently argues that reliance by both the learned Courts below upon the report of the Local Commissioner appointed by the Court, is misplaced. The fact that material which is admittedly used in a small eatery (*Dhaba*), was found at the time of inspection of the spot clearly shows that the small eatery (*Dhaba*) was being run by the present petitioner on the premises. It is however clearly stated that possession of the premises has since been delivered to the landlord in the execution proceedings. It is thus prayed that this petition be allowed and the impugned orders dated 01.04.2015 and 12.07.2018 passed by the learned Rent Controller as well as learned Appellate Authority, Bhiwani,

respectively, be set aside.

I have heard learned counsel for the petitioner and have gone through the file with his able assistance.

At the outset, it is noted that no challenge has been raised to the substitution of respondents no.1 to 3 as landlord in place of Pawan Kumar, who has since died.

No argument has been raised regarding the relationship of tenant and landlord between the parties. Respondent-landlord set up a specific plea that the premises in question were sub let by the petitioner to respondent-Arjun, who is running an eatery in the adjoining shop by the name of '*Jagdamba Bhojnalaya*'. The demised shop was averred to be used as a store by the said respondent-Arjun. Reliance was placed by both the learned Courts below on report Ex.P-3 submitted by the Local Commissioner, who was appointed by the Court. As per the said report, inspection of the premises was carried out in the presence of both the parties. The demised shop was found to be used as a store, wherein four bags of flour, small pieces of wood, some vegetables i.e., potatoes, onion, tomatoes, cauliflower and cabbage etc., were lying along with two empty plastic drums, a table, battery, gas cylinder, tandoor etc. The premises were inspected on 19.03.2008 at 6.00.p.m., after issuing notice to the parties.

It is apparent from the said report that the premises in question were indeed being used as a store. Premises in question were not found to be in possession of the tenant. Local Commissioner, Sh. Sanjay Sheoran, Advocate, was duly examined as PW-3, but nothing favourable to the petitioner could be elicited in his cross-examination. It is further a matter of

record that no such evidence was produced by the petitioner to indicate that any restaurant or eatery was being run by him in the demised premises. Petitioner while deposing as RW-1 has admitted that respondent-Arjun was running a *dhaba* in the adjoining premises. Learned Rent Controller, Bhiwani has rightly observed that there are material contradictions in the version put-forth by RW-1 and RW-2. Detailed reference has been made thereto in the impugned orders. Concurrent findings of fact have been correctly rendered by both the learned Rent Controller as well as learned Appellate Authority, Bhiwani, after proper appreciation of the evidence on record.

No other argument has been raised.

Learned counsel for the petitioner is unable to point out any illegality, infirmity or perversity in the impugned order dated 01.04.2015, passed by the learned Rent Controller, Bhiwani as well as order dated 12.07.2018, passed by the learned Appellate Authority, Bhiwani, which calls for interference by this Court in exercise of revisional jurisdiction.

Petition is accordingly dismissed with no order as to costs.

14.11.2018
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.