

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

**Civil Revision No.5542 of 2015 (O&M)
Date of Decision: April 19, 2018.**

Amar Tyres Private Limited

.....PETITIONER(s).

VERSUS

Harinder Kaur and another

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Animesh Sharma, Advocate
for the petitioner (s).

Mr. Aakash Singla, Advocate
for respondent No.2.

SURINDER GUPTA, J.

Harinder Kaur, respondent No.1 filed petition against M/s Ikeda Enterprises-respondent No.2 under Section 13 of East Punjab Urban Rent Restriction Act, 1949 seeking its ejectment from the demised premises from Industrial Shed No.1, plot No.44 Industrial Area Phase-II, Chandigarh on the ground of non-payment of rent. She alleged that respondent No.2 was inducted as tenant in the demised premises on the basis of registered lease deed 11.05.2004. Respondent No.2 admitted execution of the lease deed dated 11.05.2004 with the averment that it was got executed under a false assurance to give possession of the demised premises on rent. It was also alleged that respondent-landlord had no clear title of the demised premises in her favour and was not competent to let out the same. In reply, it was

alleged that possession of shed No.1 or 4 as being alleged, was never handed over to respondent No.2 by the respondent-landlord, either before or after the execution of this rent deed dated 11.05.2004, hence there was no relationship of landlord and tenant between the revision petitioner and respondent No.1.

Vide order dated 17.01.2013, petition filed by Harminder Kaur was allowed and M/s Ikeda Enterprises was ordered to be ejected from the demised premises. Despite pleading that M/s Ikeda Enterprises is not in possession of the premises, an appeal was filed by it before the Appellate Authority, Chandigarh, which was also dismissed. In appeal, an issue was raised that appellant M/s Ikeda Enterprises was inducted as tenant in the demised premises by M/s Amar Tyres Pvt. Ltd. and reliance was placed on lease deed dated 01.12.2000. This plea was, however, discarded by the Appellate Authority and while rejecting this plea a note was taken of the statement of Mr. K.S. Suljana, Managing Director of M/s Amar Tyres Pvt. Ltd., who appeared before the Rent Controller as RW2 and had admitted that the suit filed by M/s Amar Tyres Pvt. Ltd. against Harminder Kaur, claiming title over the demised premises/suit property, had been dismissed.

During the execution proceedings initiated on the application of Harminder Kaur-respondent No.1, revision petitioner M/s Amar Tyres Pvt. Ltd. filed objections raising the plea that Industrial Plot No.44 in Industrial Area Phase-II, Chandigarh is owned by M/s Amar Tyres Pvt. Ltd. and Shed No.1 or 4 alleged to have been let out by Harminder Kaur to respondent No.2 is not existing at the spot. The plea was raised by respondent No.2-M/s Ikeda Enterprises and discarded by the Rent Controller and Appellate

Authority on the ground that the premises in dispute was let out to it by M/s Amar Tyres Pvt. Ltd. vide lease deed dated 01.12.2000 and respondent No.1 had vacated the tenanted premises and handed over possession to M/s Amar Tyres Pvt. Ltd. was again raised in the objections, which were contested, controverted and denied by respondent No.1 inter-alia pleading in para 4 of the preliminary objections as follows:-

“4. That the objector i.e. M/s Amar Tyres Pvt. Ltd. (sic is) neither the owner nor landlord of the premises in dispute and moreover neither made any application while the rent petition was pending before the Court of Rent Controller, U.T. Chandigarh to implead it as necessary party despite the knowledge of the proceedings. Moreover, Sh. K.S. Suljana have already appeared as witness on behalf of J.D. i.e. M/s Ikeda Enterprises and also placed on record the same document which the objector has now attached with the present objections. Hence, the objector has no locus standi to file the present objections and moreover the issues raised in the present objection have already been decided by the Ld. Rent Controller as duly mentioned above, hence, the objections are liable to be dismissed on this ground also.”

The objections were dismissed by the Rent Controller.

Learned counsel for the revision petitioner has argued that objector is the co-owner, as such, landlord of the property. As per the copy of rent note Annexure P-2, demised premises was let out to M/s Ikeda Enterprises on 01.12.2000. The tenant (M/s Ikeda Enterprises) vacated the premises and returned possession to the objector in the year 2005. While referring to the report of the Local Commissioner (Annexure P-8), he has

argued that this report proves that possession over the suit property is of objector-revision petitioner and none of the tenant in demised premises admitted himself to be tenant under respondent No.1. The ejectment of respondent No.2 was ordered from Shed No.1, while the execution was filed seeking its ejectment from Shed No.4. Learned Rent Controller has not even discussed and dealt with the objections raised by the objector, in his order.

On perusal of the paper book, I find that the objections have been filed by the revision petitioner with a view to help the tenant, whose ejectment has been ordered from the demised premises. I form this opinion on the basis of pleadings of M/s Ikeda Enterprises in the ejectment petition, wherein it was specifically pleaded that after surrendering the possession in the year 2005, M/s Ikeda Enterprises are not in possession of the demised premises. In preliminary objection No.2 of the reply filed by the tenant, it was specifically pleaded as follows:-

“Possession of Shed No.1 or 4 as being alleged, was never handed over to the respondent either before the execution of this rent deed or after the execution of this rent deed dated 11.05.2004 or in compliance to the rent/lease deed dated 11.05.2014 by the petitioner, hence there was no relationship of land lord and tenant between the petitioner and respondent.”

It was further pleaded in para 3 of the reply as follows:-

“Since the premises in question was never handed over for occupation to the respondent nor the respondent have ever operated any business from the shed in question, Therefore, eviction from the premises does not arises. Respondent have no concern with the premises in

question. The rent being claimed for the period never became due as the premises was never handed over nor occupied by the respondent as the same was never in possession of the petitioner. The petition deserve dismissal.”

It is surprising that despite taking the plea that respondent No.2 has no concern with the demised premises, it has contested the petition, produced evidence and even K.S. Suljana, Managing Director of Objector/revision petitioner appeared as RW2. The objections raised by the objector are same, which were point in issue in the ejectment petition and have been looked into the dealt with by the Rent Controller as well as Appellate Authority. So far as lease deed executed by M/s Ikeda Enterprises in favour of respondent No.1 is concerned, it is a registered document, while the lease deed Annexure P-2 is on plaint paper and is not a registered document. The receipt of payment of rent Annexure P-3 relied by the objector appear to be a created document. First such occasion to prove these receipts was when Mr. K.S. Suljana, Managing Director of objector appeared as witness before Rent Controller. Even after passing of ejectment order M/s Ikeda Enterprises filed appeal before the Appellate Authority, challenging the order of Rent Controller. That appeal was also hotly contested and decided on 05.03.2014 by the Appellate Authority. All this reflects that objector was well aware of the pendency of the ejectment petition. Managing Director of objector appeared before the Rent Controller but never moved application to get objector impleaded as party. It is proved on record that respondent No.1 is owner of the demised premises. Even otherwise, Rent Controller has not to look into the title of

respondent No.1 as in view of registered lease deed dated 11.05.2004, respondent No.1 was landlord of respondent No.2.

Learned counsel for the revision petitioner has referred to the report of local commissioner (Annexure P-8) in support of his contention that respondent No.2 was not a tenant under respondent No.1. This report is of no help to the petitioner for the following reasons:

- (i) Firstly, it is a report taken in another case in which respondent No.1 had no opportunity to refute or challenge the same.
- (ii) Secondly, perusal of the report shows that local commissioner had exceeded his authority while visiting the spot. He was directed to visit the premises in question i.e. Industrial shed No.44, Industrial Area Phase-II, Chandigarh and to ascertain the factual position existing there as well as work being carried out by the parties to suit and with further direction to report about the position of electricity meter. It was a dispute between M/s Amar Tyres Private Limited (now revision petitioner) and electricity board. Neither any authority was given to the local commissioner nor it is permissible for him to inquire from the person in possession as to under whom they were tenant.
- (iii) Thirdly, the local commissioner was not appointed to collect evidence and his report stating about collection of evidence regarding the status of the tenancy of the person in possession is squarely beyond the authority allowed to him and not admissible.
- (iv) Fourthly, the local commissioner has not reported that he has made any inquiry from respondent No.2 about his tenancy, as such, this report relied on by the revision petitioner is irrelevant.

The role of the executing Court is only to execute the order/decreed and it cannot go beyond the observations made by the Court/Authority in its judgment/order. The objections filed by revision petitioner have been dismissed as the issues raised have already been decided in the order passed by the Rent Controller and Appellate Authority. I find no legal or factual infirmity in the impugned order passed by learned Rent Controller, calling for interference in this revision.

It has been argued that Shed No.1 or 4 are not in existence at the spot. The ejectment of respondent No.2 was sought from Shed No.1 while respondent No.1 in execution has sought possession of Shed No.4.

The ejectment of respondent No.2 as per order of learned Rent Controller has been ordered from the demised premises and the description and identity of the same is to be looked into by the Executing Court. Even if, there is some mistake in the details of demised premises in the execution application, the same can be rectified by the Executing Court.

With the above observations, I find no merits in this revision petition. The same is dismissed.

April 19, 2018.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No