

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

**C.R. No.5754 of 2012 (O&M)
Date of Decision.19.09.2018**

Rajinder Kumar and another

...Petitioners

Vs

Ajit Singh

...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amar Vivek, Advocate
for the petitioners.

None for the respondent.

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AMIT RAWAL J. (ORAL)

The landlords are in revision petition against the concurrent finding of fact whereby the rent petition seeking eviction of the tenant on the short and invalid tender of rate of rent has been dismissed.

Succinctly facts, which are revealed from the pleading of the parties, are that the landlord sought eviction of the tenant on the ground that the respondent was inducted as tenant for carrying out the workshop and machinery @₹700/- per month plus house tax and is liable to be evicted on account of having not paid rent w.e.f. December, 1998.

The aforementioned rent petition was contested by the respondent-tenant on the premise that there was no relationship of landlord and tenant between the parties as the premise was taken on rent from one Savitri Devi wife of Niranjana Dass and the entire rent had been paid to her till her death and after her death, Smt. Trishla Devi was collecting rent from the tenant and thereafter, Satya Devi

wife of Shital Parkash daughter of Niranjana Dass was collecting the rent against receipts. In the workshop, the machinery installed was exclusive ownership of the respondent-tenant. The meter connection was also in the name of Niranjana Dass, owner. It was denied that the rate of rent of the property in question was ₹700/- per month plus house tax but the rate of rent was ₹200/- per month, which was thereafter raised to ₹300/- per month.

A counter-claim was also filed claiming that the rate of rent was increased from ₹200/- to ₹300/- but under the threat of eviction, paid ₹700/- per month.

The counter claim was refuted by the landlord and in these circumstances, the Rent Controller framed the following issues:-

- “1. Whether the relationship of landlord and tenant qua the property in dispute exists? OPA*
- 2. Whether the tender is short and invalid? OPA*
- 3. What is the rate of rent? OP parties*
- 4. Whether the petitioner is entitled for ejectment of the respondent from the demised premises? OPA*
- 5. Relief.”*

The landlord stepped into the witness box himself but did not conclude evidence despite sufficient opportunities.

On the other hand, tenant examined himself as RW1, Gurbant Singh as RW2 and Shital Parkash as RW3.

In rebuttal, the petitioner landlord tendered certified copy of Ex.PX and closed the rebuttal evidence.

On the preponderance of evidence brought on record, the Rent Controller dismissed the rent petition and held that the tender made by the tenant was not short or invalid but there was an excess payment of ₹19,875/- which could be adjusted towards future rent but held that there was a relationship of landlord and tenant. It is in these circumstances, the tenant assailed the finding of the Rent Controller on issue No.1 with regard to relationship. The Appellate Authority after examining the evidence being last authority of law and fact, allowed the appeal. In this backdrop, the present revision petition has been preferred.

Mr. Amar Vivek, learned counsel appearing on behalf of the petitioners submitted that the judgment of the Appellate Authority is not sustainable in the eyes of law, as it fell into a patent error while returning finding that there was no relationship of landlord and tenant. While rendering the aforementioned finding, it overlooked the admission in the written statement-cum-counter claim wherein the tenant categorically admitted the relationship. The Appellate Authority ought not to have non-suited the landlord on the ground that there was no signature on the rent note Ex.A/1 but the fact remains that a bare comparison of signature of the respondent-tenant on the written statement, application for deposit of diet money, vakalatnama and other documents leaves no manner of doubt that signatures were of one and the same person and therefore, the Court could have assumed the role of an expert.

RW3, Shital Parkash in cross-examination could not deny as to whether Rajinder Kumar and his brothers were owners of

firm M/s Oswal Engineering Works.

The tenant forged various rent receipts, which have been overlooked by the Appellate Authority as it could not be believed that the respondent would issue cheques in continuation after many years in succession and these would be issued only for rentals. There was no suggestion put to the landlord with regard to relationship of landlord and tenant, thus, urges this Court for setting aside the finding under challenge.

There is no representation for the respondent.

The case is of the year 2012 and therefore, I proceeded to dispose of the same.

I have heard learned counsel for the petitioners, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Amar Vivek. It was incumbent upon the landlord to prove signatures of the tenant on the rent note Ex.A1. Except self-serving statement of the landlord, no steps were taken to call any expert or any application submitted for calling upon the respondent to give specific signature. In my view, the petitioner-landlord failed to discharge onus for the purpose of rendering finding on issue No.1 i.e. relationship between the landlord and tenant. The electric bills were in the name of Niranjana Dass.

The dispute regarding the property was pending in the High Court as the ownership had not been decided. It is in these circumstances, this revision petition was ordered to be heard with RSA No.1567 of 1980. The aforementioned regular second appeal has been dismissed vide order dated 04.03.2010 wherein the suit filed

by Satya Devi against Surinder Kumar has been dismissed. Be that as it may, the tenant did not attorn the petitioner as landlord. The argument that the dispute with respect to ownership was pending in the High Court is not correct as the suit was filed only with regard to declaration of partnership deed as null and void. For claiming eviction of the tenant, it is not necessary that the landlord has to be owner. In other words, landlord can be other than the owner. But having failed to prove signature on rent note Ex.A1, petitioner miserably failed to prove relationship of landlord and tenant. Therefore, the Appellate Authority, in my view, has correctly appreciated the evidence while dismissing the rent petition.

As an upshot of my finding, I do not find any illegality and perversity in the judgment rendered by the Appellate Authority. No ground for interference is made out. The revision petition is dismissed.

(AMIT RAWAL)
JUDGE

September 19, 2018
Pankaj*

Whether Speaking/Reasoned Yes

Whether Reportable No