

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

114

CR No.6705 of 2016 (O&M)

Date of decision: 18.08.2018

Palo @ Bholi

..... Petitioner

Versus

Rani

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Munish Bhardwaj, Advocate
for the petitioner.

None for the respondent.

ANIL KSHETARPAL, J. (ORAL)

As per office report dated 12.06.2018, the respondent has been duly served. This Court with the help of Court master has checked the report on the summons, the tenant has been served, however, she has not chosen to appear and contest.

Landlady-petitioner is in the revision petition against the orders passed by the learned Rent Controller affirmed by the Appellate Authority dismissing the petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949.

The landlady sought eviction of the respondent-tenant with specific assertions that the house in question was owned by Mohinder Pal, his brother and wife of the brother namely Harjinder Kaur. The respondent was inducted as a tenant in a room No.4 at the monthly rent of Rs.1200/- in May, 2011, but thereafter, she also occupied room No.5 and 6 with an

excuse that the respondent want her independent entry in the premises. Hence, the rate of rent was fixed at Rs.3500/- per month. It was claimed that she has not paid rent @ Rs.3500/- per month w.e.f. June, 2011. It was further pleaded that since the tenant was not paying the rent, therefore, an application was moved before the Police and later on, a settlement was arrived at when the respondent assured to pay the whole rent to the Sarpanch of the village and she also undertook to vacate the tenanted premises on 17.11.2011. However, she did not honour the commitment. It will be noted that the respondent-tenant filed a suit for permanent injunction wherein a stand was taken that there is no relationship of landlord and tenant between the respondent-tenant on one side and Mohinder Pal, Harjinder Kaur on the other side. In the aforesaid litigation, she claimed that she is tenant under the petitioner.

Mohinder Pal also filed a petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 wherein also in the written statement, she took a stand that there is no relationship of landlord and tenant and it is the petitioner who is her landlady. Para 2 of the written statement filed by the respondent-tenant is extracted as under:-

“That para No.2 of the petition is wrong and denied. It is wrong that the Nasibo and other tenants were residing in the demised property. It is further wrong that the respondent had been threatening to break open the locks of other rooms and to occupy the whole house without paying the rent as alleged. Palo, the sister of the petitioner is in the habit of filing false complaints against the answering respondent in order to pressurize her to vacate the demised premises. There is no relationship of landlord and tenant between the petitioner and the answering respondent since the demised premises was neither let out by the petitioner to the answering respondent nor any rent has been

paid by the answering respondent to the petitioner at any time. Smt. Palo had let out the property in dispute to the answering respondent and the said Palo was receiving rent from the answering respondent. Even, Palo never stated herself to be the attorney of the petitioner at any time. Even, the petitioner never claimed himself to be the landlord of the property in dispute at any time. He has filed a false petition against answering respondent which is liable to be dismissed.”

In the previous proceedings when she appeared in evidence, she stated that she is tenant under the petitioner herein. Thus, the previous petition filed by Mohinder Pal was dismissed. Thereafter, the present petition was filed by the petitioner-Palo @ Bholi. In the aforesaid petition, the respondent-tenant pleaded that the previous petition filed by Mohinder Pal has been dismissed and even appeal was dismissed. In this petition, the respondent-tenant took a stand that there is no relationship of landlord and tenant between the parties as the house is jointly owned by Mohinder Pal and his wife Harjinder Kaur.

Both the Courts below have dismissed the petition on the ground that relationship of landlord and tenant is not established between the parties. Learned Rent Controller has held that the petitioner herein has not pleaded that she had inducted the respondent as a tenant whereas the Appellate Authority has upheld the judgment on the ground that petitioner-landlady is not proved to be owner of the premises.

In the considered opinion of this Court, the approach of both the authorities below was erroneous. Once it is proved on the file that in the previous two litigation, the respondent-tenant had taken a stand that Palo, the petitioner herein, is her landlady, she was estopped from disputing the relationship of landlord and tenant between the parties. As per Section

116 of the Evidence Act, a tenant is estopped from challenging title of his or her landlord during the continuance of the tenancy. Still further, once in the previous litigation, on the basis of the aforesaid stand, the previous petition filed by Mohinder Pal has been got dismissed, the respondent-tenant cannot be permitted to blow hot and cold in the same breath. Still further, while deciding the rent proceedings, ownership of the landlord is not the issue normally required to be decided. The authorities under the Act are only to see whether there is a relationship of the landlord and tenant between the parties.

After denial of relationship of landlord and tenant, the tenant has neither tendered the rent nor deposited it in the Court. Hence, the respondent is liable to be evicted on the ground of non-payment of rent.

In view thereof, the orders under challenge are set aside. The tenant is ordered to be evicted from the premises.

Revision petition is allowed.

18.08.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No