

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 8183 of 2015

Date of Decision:1.11.2018

Sh. Satyanarayan Bhagwan Charitable Trust Rewari

---Petitioner

vs.

Firm Pyare Lal Gaharmul Gang Bazar Rewari and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Mukesh Mittal, Advocate
for the petitioner

Mr. Gopal Sharma, Advocate
for the respondents

Rekha Mittal, J.

Challenge in the present petition has been directed against order dated 26.8.2015 passed by the Rent Controller, Rewari whereby application under Order 1 Rule 10(2) of the Code of Civil Procedure (in short “the Code”) filed by respondent No. 2, has been allowed.

The petitioner filed ejectment application under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (in short “the Act”) against firm Pyare Lal Gaharmul, Ganj Bazar, Rewari through Babu Lal son of Gaharmul proprietor of the firm and Babu Lal was also impleaded as respondent No. 2, on the grounds raised in the eviction

application (not relevant at present). Babu Lal filed an application on the premise that he is an old man of 70 years suffering from old age ailments. He is neither the proprietor nor partner of firm Pyare Lal Gaharmul. He is the father of proprietor of said firm, therefore, he has been wrongly impleaded as a party.

The petitioner filed reply to the application seriously contesting claim of the applicant. In reply to para 6, it has been averred that Parmod Kumar son of Babu Lal was never a proprietor of the respondent firm at the time of inception of tenancy but seems that Babu Lal has sublet the shop to his son Parmod Kumar and this fact is not to knowledge of the petitioner. In case, Parmod Kumar is proved to be proprietor of the firm since inception of the tenancy, the landlord will not hesitate in accepting Parmod Kumar as proprietor of the firm.

Having heard counsel for the parties in the light of materials on record, the Rent Controller accepted the application by relying upon copy of order under Section 15(2) of the Haryana Value Added Tax Act and form VAT-R2 for the year 2006 and 2014 to hold that Parmod Kumar is proprietor of firm Pyare Lal Gaharmul, Ganj Bazar, Rewari.

Counsel for the petitioner would urge that tenancy in favour of Pyare Lal Gaharmul was created since long and it is in arrears of rent from Fagun Sudi 15 sammat 2062 till date @ Rs. 55/- per month. It is further submitted that no such plea has been raised by Babu Lal that either he was not proprietor of Pyare Lal Gaharmul at the time of creation of tenancy or he never remained proprietor of the said concern. It is also not the plea of the respondent-applicant that Parmod Kumar was the proprietor of the

concern since inception of tenancy or tenancy was created in favour of Parmod Kumar being proprietor of the concern. It is vehemently argued that the Rent Controller has gravely erred by allowing plea of the applicant by deleting his name from the array of parties and further permitting Parmod Kumar to be added as respondent even without an application being filed by Parmod Kumar for his impleadment.

Counsel representing the respondents has supported the impugned order with the submission that as Babu Lal is not proprietor of firm Pyare Lal Gaharmul, his impleadment as a party is neither necessary nor proper for complete and effective adjudication of the matter in controversy, therefore, the Rent Controller has rightly deleted his name from the array of parties and added name of Parmod Kumar being proprietor of the concern who in fact filed the written statement to contest the eviction proceedings.

I have heard counsel for the parties and perused the paper book particularly the order impugned.

Counsel for the respondents has not disputed that tenancy in favour of Pyare Lal Gaharmul, proprietorship concern was created long ago. A proprietorship has no independent existence and tenancy in favour of a proprietorship concern is to be construed as tenancy in favour of its proprietor. It is not plea of Babu Lal that he was never proprietor of Pyare Lal Gaharmul or at the time of creation of tenancy, he was not proprietor of the said concern. It is also not his plea that Parmod Kumar was proprietor of the concern at the time of creation of tenancy. In the given scenario, the learned Rent Controller without appreciating as to what is the status of

proprietorship concern and tenancy created in its favour, by relying upon documents pertaining to the period 2006 to 2014 has committed a grave error by deleting name of Babu Lal from array of parties and adding Parmod Kumar as one of the respondents without there being an application filed by Parmod Kumar for his impleadment as a respondent. In this view of the matter, order passed by the Rent Controller cannot be allowed to sustain and accordingly set aside.

For the foregoing reasons, the petition is allowed and the impugned order is set aside. However, nothing stated hereinbefore shall be construed as an expression of opinion with regard to entitlement of Parmod Kumar to be impleaded as a party or otherwise, if he files an application in this regard.

(Rekha Mittal)
Judge

1.11.2018
paramjit

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