

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.8169 of 2014 (O&M)

Date of Order:05th September, 2018

Rakesh Kumar

..Petitioner

Versus

Saroj Rani

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sandeep K.Sharma, Advocate,
for the petitioner.

Mr. Vikas Bahl, Senior Advocate, with
Mr. Nitish Garg, Advocate and
Ms. Aarzoo B.Grewal, Advocate,
for the respondent.

ANIL KSHETARPAL, J.

Petitioner-tenant is in the revision petition against the concurrent orders of eviction passed by the learned Rent Controller affirmed by the learned Appellate Authority.

Question which needs determination is “Whether a tenant who has not bonafidely disputed the derivative title of a landlord is entitled to benefit of one more opportunity to assessment of the provisional rent in terms of judgment passed by the Hon'ble Supreme court in the case of **Rakesh Wadhawan v. Jagdamba Industrial Corporation, 2002(1) R.C.R. (Rent) 514**”.

Some facts are required to be noticed.

Originally property in dispute in the shape of plot was allotted to one Shri Birbal, who transferred the same to Late Sh. Madan Bakshi.

Late Sh. Madan Bakshi had constructed the house. On the death of Madan Bakshi property was inherited by his widow Kamla. The transfer was recorded in the records of Cooperative House Building Society. It is undisputed that Gopal Krishan Bakshi, son and widow-Kamla inducted petitioner-tenant in one room of the residential premises. It is the case of the landlord that Smt. Kamla transferred her rights in favour of the respondent-landlord Saroj Rani in the year 2005. In the records of the Cooperative House Building Society change was made in favour of Saroj Rani. In other words, Smt. Saroj Rani landlord was recorded as owner of the property in 2005 itself.

Respondent-landlord while asserting these facts filed a petition under Section 13 of the Haryana Urban(Control of Rent & Eviction) Act, 1973, against the tenant-petitioner on 3 grounds:-

- (i) non payment of rent;
- (ii) changing the nature of user; and
- (iii) bonafide necessity for re-construction of the building.

It was specifically pleaded in the petition that Kamla had transferred the ownership in favour of respondent-petitioner and membership of the Cooperative House Building Society has been transferred in favour of respondent-landlord on 21.05.2015.

Pursuant to the notice issued along with a copy of the petition, petitioner appeared in the court through counsel on 07.10.2009. Thereafter he sought adjournment for filing reply and case was adjourned on the request of counsel for the petitioner for 4-5 occasions. On 06.04.2010, written statement was filed by the tenant-petitioner. On 06.04.2010, learned

counsel appearing for the respondent-landlord requested that the rent be assessed. However, the court noticed that relationship of landlord and tenant has been disputed between the parties, therefore, there is no need to assess the rent at this stage. Order dated 06.04.2010 is extracted as under:-

“Written statement filed. Ld. Counsel for the petitioner has submitted that let the rent be assessed. It is pertinent to mention here that the respondent has denied the relationship and landlord tenants between the parties and when the relationship is so denied, there is no need to assess the rent at this stage. In the scenario, there is no need for assessment of the rent at this stage without delving into the merits of the case. Now, the case is adjourned to 7.5.2010 for filing of rejoinder if any and for framing of issues.”

In the written statement which was filed on the same day, tenant-petitioner took a stand that there is no relationship of landlord and tenant between the parties and he has given rent to Shri Krishan Gopal Bakshi son of Kamla, the previous landlady upto March, 2009. It may be noted that Kamla had died in the year 2005 itself.

After framing of the issues, parties went to trial and respondent-landlord in order to prove her title, examined official from the Cooperative House Building Society and produced on file transfer letter etc. After closure of evidence of the respondent-landlord, tenant filed his affidavit in lieu of its examination-in-chief and still struck to his stand that Kamla had not sold her rights in the said house along with the rented premises or the respondent-landlord has been transferred the property in the records of the Cooperative House Building Society on 21.05.2005. The tenant-petitioner took a stand that there is no relationship of landlord and tenant between the parties. In the cross-examination when called upon to

prove that the rent has been paid upto March 2009 to Shri Gopal Krishan Bakshi, no receipt could be produced. Gopal Krishan Bakshi was also not examined in evidence.

Learned Rent Controller as well as learned Appellate Authority after examining the evidence available on the file, ordered eviction of the tenant petitioner on the ground of non-payment of rent after recording a finding that since tenant -petitioner has disputed the relationship of landlord and tenant, therefore it was not necessary for the court to assess provisional rent.

Now the stage is set for considering the question framed previously.

As per Section 2(c) of the Haryana Urban (Control of Rent and Eviction) Act, 1973, definition of landlord also includes every person from time to time deriving title under a landlord. Section 2 is extracted as under:-

“2.(c) 'Landlord' means any person who is, for the time being receiving or entitled to received rent in respect of any house whether on his own account, or on account, or on behalf, or for the benefit of any other person, or as a trustee, guardian or receiver for any other person and includes in respect of his sub-tenant, a tenant who has sub-let any house and includes every person not being a tenant who from time to time derives title under a landlord.”

Still further Section 109 of the Transfer of Property Act recognizes the rights of transferee of the lessor. It is provided that on purchase or transfer of title, the transferee in absence of a contract to the contrary shall possess all rights. Section 109 of the TPA is also extracted as under:-

“109. Rights of lessor’s transferee.—If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not, by reason only of such transfer cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him: Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee. The lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they disagree, such determination may be made by any Court having jurisdiction to entertain a suit for the possession of the property leased.”

Learned counsel for the tenant-petitioner submitted that the respondent-landlord was a transferee during the currency of the lease. He submitted that no notice was given to the tenant-petitioner and there was no attornment in favour of the respondent-landlord. Hence, he submitted that the denial of relation between landlord and tenant was justified and hence, eviction of the petitioner-tenant has been wrongly ordered. In support of his submission he relied upon a judgment passed by a Coordinate Bench in the case of **Raghubir Chand Mahajan v. Indian Bank 2015(4) R.C.R. (Civil)**

156. He further relied upon judgment passed by the Hon'ble Supreme Court in the case of **Bismillah Be v. Majeed Shah, (2017)2 SCC 274.** He further

relied upon a subsequent judgment passed by the Hon'ble Supreme Court in the case of Apollo Zipper India Ltd. vs. W. Newman And Co. Ltd. (2018) 6 SCC 744.

On the other hand learned counsel for the respondent-landlord submitted that the defence of the tenant was not bonafide. He submitted that even if the tenant had no prior notice but he at least had notice on filing of the petition. He submitted that after service of the notice along with the petition, tenant after appearance on 07.10.2009 filed his written statement only on 06.04.2010 i.e. after a period of 6 months. At that stage, tenant never requested the court to assess provisional rent or offered to deposit the rent in the court subject to decision of the title. Tenant also did not file any interpleader suit. It was further submitted by learned counsel for the respondent-landlord that after the respondent-landlord had led evidence and proved her title, at that stage tenant-petitioner did not change his stand or even make a request offering to pay the rent. He further while drawing attention of the court to affidavit of the tenant submitted that the ownership as well relationship with the landlord was disputed when affidavit dated 09.06.2011 was filed. He submitted that during the course of trial before the learned Rent Controller or before the learned Appellate Authority, tenant never offered to pay any rent. He submitted that Section 109 of the Transfer of Property and the case law on derivative title is for the benefit of a honest tenant and not for the benefit of tenant who was not bonafide.

This court keeping in view the well settled principles of law has examined facts of the present case.

No doubt, in the judgment passed by the Hon'ble Supreme Court in Rakesh Wadhawan (supra) had held and interpreted the provisions

of the Rent Act to hold that learned Rent Controller is to make a provisional assessment of the rent. However, various judgments passed by this court while laying down that in case relationship of landlord and tenant is disputed, Rent Controller is not required to pass an order of provisional assessment. As noted in the order dated 06.04.2010, passed by the learned Rent Controller, extracted above, it was counsel for the landlord who requested for assessment of the rent. However, there was no request on behalf of tenant-petitioner for provisional assessment. Even at that stage, the tenant had a sufficient notice that title has passed in favour of respondent-landlord and, therefore, he must pay the rent. Even if the tenant had any genuine doubt about validity of the transfer, he could have requested the court to assess provisional rent and offer to deposit in the court subject to final decision in the rent petition. In the present case tenant has not taken any step in this regard.

Still further when the respondent-landlord led her entire evidence and proved a valid transfer in her favour, even at that stage tenant did not offer to pay the rent. Still further, after closure of the evidence by the landlord tenant, petitioner-tenant still disputed the title and relationship between the respondent-landlord and him.

Still further tenant has failed to prove that he had paid rent to Gopal Krishn Bakshi son of Smt. Kamla, previous owner, upto March 2009 as pleaded by him in the written statement. In other words, tenant kept enjoying the possession without payment of any rent to any one.

Now let's examine the judgment passed in the case of **Raghubir Chand Mahajn** (supra). In the aforesaid case the court had found that the tenant-petitioner had bonafidely disputed the relationship of

landlord and tenant. Tenant had also filed a inter-pleader suit. Still further the courts noticed that the daughter of the previous owner had filed an eviction petition and tenant had paid the rent to the daughter. Hence, the aforesaid judgment would not be applicable in the facts of the present case.

Now let's examine the judgment passed by the Hon'ble Supreme Court on derivative title. First judgment in this regard is in the case of ***Bismillah Be*** (*supra*). In the aforesaid case, the court was examining the petition filed by landlord. Hon'ble Supreme Court while reversing the judgment of the High Court remanded the case back to the courts below. It may be noticed that in the aforesaid case, landlord had served a notice on the tenant terminating his tenancy before filing appropriate proceedings. On derivative title, rights of tenant to challenge the title of the Landlord has been examined in paragraphs 24 & 25 which is extracted as under:-

24. Law relating to derivative title of the landlord (Lessor) and challenge, if made, to such title by the tenant (Lessee) during subsistence of tenancy in relation to demised property is fairly well settled. Though by virtue of [Section 116](#) of the Evidence Act, 1872, the tenant is estopped from challenging the title of his landlord during continuance of the tenancy, yet the tenant/lessee is entitled to challenge the derivative title of an Assignee/Vendee of the original landlord (Lessor) of the demised property in an action brought by the Assignee/Vendee against the tenant for his eviction from the demised property under the Rent laws. This right of a tenant is, however, subject to one caveat that the tenant/lessee has not attorned to the Assignee/Vendee. In other words, if the tenant/lessee pays rent to the Assignee/Vendee of the tenanted property then it results in creation of an attornment between the parties which, in turn, deprives the tenant/lessee to challenge the

derivative title of an Assignee/Vendee in the proceedings.

25. However, once the Assignee/Vendee proves his title to the demised property, the original tenancy devolves on the Assignee/Vendee and tenant/lessee by operation of law on the same terms and conditions on which it was entered into with the original landlord/lessor and continues till either modified by the parties or is determined by the landlord in accordance with law. It enables the Assignee/Vendee to acquire the status of a "new landlord" in place of the original landlord of the demised premises qua tenant/lessee. (See Law of Evidence by Sarkar, 16th Edition, pages 2106-2108)."

Even in the case of **Apollo Zipper India Ltd.** (*supra*), the Hon'ble Supreme Court relied upon the judgment passed in **Bismillah Be.**

Hon'ble Supreme Court in the aforesaid judgment was not dealing with a tenant who was not honest before the court. Hon'ble Supreme Court was not examining the issue in the context that the defence taken by the tenant was not bonafide. In the present case, the stand of the tenant was not bonafide.

No doubt, if the tenant does not have any notice of transfer of title by the lessor, he is justified in disputing relationship of landlord and tenant. However, such dispute has to be honest and bonafide. A tenant cannot be permitted to enjoy the possession without paying the rent either to the previous owner or to the transferee-landlord. The judgment passed by the Hon'ble Supreme Court in the case of **Rakesh Wadhawan** (*supra*) would also not come to rescue a tenant, who was not honest before the court. The Rent Controller is not bound to assess provisional rent in case relationship of landlord and tenant is disputed. The opportunity of payment of rent as

provided after assessment of the provisional rent in the case of **Rakesh Wadhawan** (*supra*) is for the benefit of honest tenants who have taken a bonafide defence. It is not for tenants who are dishonest.

Keeping the aforesaid facts this court does not find any error in the judgments passed by the courts below, ordering eviction. Hence, revision petition is dismissed.

05th September, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No