

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.927 of 2015 (O&M)
Date of Decision: 24.08.2018

Lawan Verma and another

..... Petitioners

Versus

Charanjit Singh Sohal

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vikas Bahl, Sr. Advocate with
Mr. Divanshu Jain, Advocate and
Mr. Nitish Garg, Advocate and
Mr. Umaid Mann, Advocate
for the petitioners.

Mr. Vikas Singh, Advocate and
Mr. Kuldeep Singh, Advocate
for the respondent.

ANIL KSHETARPAL, J.

Counsel for the parties are agreed that since the respondent-landlord is having an Indian passport, therefore, this case can be decided without waiting for reference to a Larger Bench of the Hon'ble Supreme Court in SLP(C) No.569 of 2011, titled as Ram Lal (Dead) Through LRs Vs. Ram Dass.

Tenants-petitioners are in the revision petition against the order passed by the learned Rent Controller dated 02.12.2014.

A special provision has been added enabling non-resident Indians to seek eviction of their tenants under East Punjab Urban Rent Restriction Act, 1949. Section 13-B and other sections have been added entitling non-resident Indians to seek eviction of the tenant from the premises owned by him. In the present case, the respondent-landlord, who

was also, owner fulfilling the requirement of the Act applied for eviction of the tenants-petitioners as he intends to start his own business in the premises namely ground floor of SSS No.145, Phase-VII, SAS Nagar, Mohali. As per the provisions of the Act, the petition was filed on 06.08.2009. The petition was filed by the respondent himself. The petition was also supported by an affidavit of the landlord. It was pleaded that the petitioner who is living in UAE for quite sometime, now intends to return to India and requires the premises for his business. The respondent-landlord further pleaded that he does not own any other property in India except the property which was given on lease to the tenants-petitioners. It was further pleaded that ownership of the said property was transferred in the name of the landlord in the year 2001 by his uncle namely Gurdeep Singh Sekhon and thereafter, the respondent-landlord is the sole owner of ground floor of the premises in question. Copy of the transfer-cum-allotment letter issued by the Punjab Urban Development Authority dated 24.05.2001 was attached.

The tenants-petitioners contested the petition by filing a reply. The status of respondent-landlord as NRI as defined under the Rent Act was disputed. The petition was also contested on various other grounds. It was further pleaded in the written statement that the respondent-landlord has concealed the fact that he is already in occupation of the basement of the building in question where his brother and father are running a photo business under the name of 'Film Creatives'.

In the replication, the respondent-landlord submitted that he is an NRI and residing in Dubai since last 30 years. He is doing supervisory job in Dubai. He further clarified that the basement is meant for storage

purpose and no commercial activity can be done from the basement portion. It was denied that that the basement of the building is being used by the brother and father of the landlord. It was claimed that the basement of the demised premises is lying vacant.

It will be noted that initially Rent Controller did not grant leave to defend, however subsequently in revision petition, leave to defend was granted the tenants-petitioners were permitted to contest the petition.

The respondent-landlord appeared through his brother Gurjit Singh who had been authorized as per General Power of Attorney. The opportunity was given to the tenants to cross-examine the witness. The tenants were also be granted opportunity to lead their evidence. The Rent Controller after analyzing the evidence available on the file allowed the petition and ordered eviction of the petitioners-tenants.

This Court has heard learned counsel for the parties and with their able assistance gone through the documents filed in the paper book apart from photocopy of the record produced by the respective counsels, correctness whereof is not being disputed.

Learned senior counsel appearing for the petitioners submitted that the respondent-landlord was not the owner of the premises and therefore, the petition is not maintainable. He while drawing attention to letter of allotment produced by the respondent-landlord submitted that no conveyance deed has been produced and in absence of conveyance deed, the petitioner cannot be held to be owner of the property which is 'sine qua non' for filing the petition under Section 13-B of the Act of 1949. He further submitted that requirement of respondent-landlord is not bona fide for two reasons.

Firstly, the respondent-landlord has not appeared in the evidence and thus, the tenants were deprived of an opportunity to cross-examine the landlord. Hence, he submitted that bona fide requirement of the petitioners is not proved. He further submitted that the basement is a commercial space is admittedly available with the landlord but he has not opened any business therein.

On the other hand, learned counsel for the respondent-landlord pointed out that the allotment letter (Annexure P-6) is document of ownership as issued by the Punjab Urban Planning and Development Authority. He submitted that initially the premises was allotted to Sh. Gurdeep Singh whereas thereafter, it was transferred in favour of the respondent-landlord vide transfer letter dated 24.05.2001. He submitted that no doubt, such allotment letter/transfer letter provides for usual stipulations like payment of entire sale consideration etc. but that cannot be interpreted to hold that the respondent-landlord was not an owner of the property. He further drew attention of the Court to the judgment passed by the Hon'ble Supreme Court in the case of Kamaljit Singh Vs. Sarabjit Singh 2014 (16) SCC 472 to contend that as per Section 116 of the Evidence Act, the tenant is estopped from challenging the title of his landlord. He further submitted that before the learned Rent Controller, no argument in this regard was raised. He further submitted that the petition was filed by the landlord himself. There was an affidavit supporting the pleadings and since the respondent-landlord is settled in Dubai, therefore, he gave authorization to his brother to appear on his behalf while drawing attention of the Court to the cross-examination of the brother of the respondent-landlord, he submitted that the brother of the landlord had answered all the relevant

questions and in fact, there is not much cross-examination of the brother of the landlord on the aspect of personal necessity. He further submitted that basement of the building cannot be independently put to any commercial use and the respondent-landlord being owner is entitled to open his business from the main showroom rather being compelled to start his business from the basement.

This Court has analyzed the arguments of learned counsel for the parties.

With regard to first submission of learned counsel, it will be noted that no doubt, Section 13-A provides that an owner who is non-resident Indian may apply to the controller for immediate possession of the building. It is further provided that right under the aforesaid section would be available only to those owners/landlords after a period of five years from the date of becoming owner of such building and shall be available only once during the life time of such an owner.

In the present case, it is undisputed that Punjab Urban Planning and Development Authority had allotted/transferred plot in question to the respondent-landlord vide letter dated 24.05.2001. The argument of learned counsel for the petitioners is that this transfer letter was only tentative as it is provided that the land shall continue to belong to Punjab Urban Planning and Development Authority until entire consideration money is paid. It will be noted here that no evidence has been produced to prove that the entire installments have not been paid rather when brother of the respondent-landlord is appeared in evidence, he had specifically stated that the conveyance deed of the building in question has already been executed in favour of the respondent-landlord. In these circumstances, this Court does

not find substance in the first submission of the petitioners-tenant. The word 'an owner' used in Section 13-B cannot be interpreted to say that an owner should be absolute owner within the meaning of transfer of Property Act. The word owner used in Section 13-B is in the context that if a person is not owner but only a landlord, such right would not be available to the landlord but it is available to owner-cum-landlord. Because as per the language of the statute, the landlord must be owner for a period of more than five years and the premises must have be let out by him. In such circumstances, the argument of learned counsel for the petitioners-tenants is devoid of any substance. Still further, learned counsel for the petitioners could not draw attention of the Court to any such submission having been raised before the Rent Controller.

With regard to second argument, it will be noted that the respondent-landlord being settled in UAE (Dubai) had originally filed the petition himself. Even replication was filed by him. However, when the stage came for evidence, he authorized his brother to appear on his behalf. Learned counsel for the respondent-landlord rightly pointed out that while cross-examining, brother of the respondent-landlord was able to answer all the material questions and in fact, apart from giving suggestions that basement of the building is lying vacant, there is not much cross-examination by the learned counsel for the tenants qua personal requirement of the respondent-landlord. Learned counsel for the petitioners-tenants while drawing attention of the Court to the cross-examination of the petitioners-tenants, submits that the landlord owner had visited India and stayed in India for 15 days about two months back. He submitted that hence, the landlord should have appeared in evidence.

However, learned counsel for the petitioners could not draw the attention of the Court whether during the days, the respondent-landlord stayed in India, the case was fixed for evidence of the respondent-landlord. Learned counsel for the petitioners-tenant relies upon certain judgments passed by this Court taking a view that it is necessary for the landlord to appear in the witness-box in person. It will be noted that appearance of a party has its genesis from Section 114 of the Evidence Act. In fact, Clause 'G' of Section 114 provides that if evidence in possession of a party is not produced, adverse inference is to be drawn. Section 114 and illustration 'G' is extracted as under:-

“114 Court may presume existence of certain facts. —The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustrations

The Court may presume—

(a) That a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;

(b) That an accomplice is unworthy of credit, unless he is corroborated in material particulars;

(c) That a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration;

(d) That a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or state of things usually cease to exist, is still in existence;

(e) That judicial and official acts have been regularly performed;

(f) That the common course of business has been followed in particular cases;

(g) That evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;

(h) That if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him;

(i) That when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it—

As to illustration (a) — A shop-keeper has in his till a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business;

As to illustration (b)—A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself;

As to illustration (b)—A crime is committed by several persons. A, B and C, three of the criminals, are captured on the spot and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable;

As to illustration (c)—A, the drawer of a bill of exchange, was a man of business. B, the acceptor, was young and ignorant person, completely under A's influence;

As to illustration (d)—It is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course;

As to illustration (e)—A judicial act, the regularity of which is in question, was performed under exceptional circumstances;

As to illustration (f)—The question is, whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances;

As to illustration (g)—A man refuses to produce a document which would bear on a contract of small importance on which he

is sued, but which might also injure the feelings and reputation of his family;

As to illustration (h)—A man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked;

As to illustration (i)—A bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it.”

It is apparent from the reading of the illustration 'G' that if a party which could produce the evidence if produced would be unfavourable to the person who withholds it, then the Court may presume existence of certain facts. This provision has already been dealt in detail by this Court while relying upon various judgments passed by the Hon'ble Supreme Court in the case of Navneet Kaur Vs. St. Soldier Properties and Industries Ltd., 2018(3) 191 PLR 158. In the aforesaid judgment, this Court has laid down various tests before Court may presume existence of certain facts which is commonly known as adverse inference. In the present case, if those tests are applied, the petitioners-tenants have failed. Learned counsel while heavily relying upon a judgment passed by the Hon'ble Supreme Court in the case of Man Kaur (dead) by LRs Vs. Hartar Singh Sangha, (2010) 10 SCC 512 has submitted that adverse inference must be drawn. However, Hon'ble Supreme Court has culled out various situations and it has been provided that if the General Power of Attorney holder is a knowledge of the facts as required and is a close relative, it is not necessary that adverse inference is drawn. The factors which have been laid down by this Court are extracted as under:-

“i) Whether other evidence available on the record is sufficient to establish the case set up by the party?

ii) Whether some facts were in knowledge of the party exclusively and his/her non-appearance has resulted in withholding the aforesaid personal information from the Court?

iii) Whether the General Power of Attorney or any representatives who has appeared for the party was in a position to answer all the questions put up by the opposite party and facts required to be proved were in his knowledge?

iv) Whether any prejudice has been caused to the other party on account of non-appearance of the party in evidence?"

In the aforesaid circumstances, no adverse inference can be drawn against the respondent-landlord. With regard to the availability of the basement, it is to be noted that the basement cannot be legally used for any independent commercial purpose. Still further, the respondent-landlord who is owner is best judge of his requirement and tenant cannot substitute his opinion in place of the landlord. In the replication, the respondent has specifically stated that the basement is for storage purpose. Still further, tenants did not lead any evidence to prove that the basement can be utilized for independent commercial purpose and size of the basement is same as of ground floor and the basement is equally suitable for the business of the landlord. In absence thereof, the petitioners-tenants cannot be permitted to derive any benefit of availability of the basement.

In view of the aforesaid, this Court does not find any good ground to interfere with the order passed by the learned Rent Controller.

Revision petition is dismissed.

24.08.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No