

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

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CR No.8723 of 2017 (O & M)
Date of Decision:23.08.2018

Arunesh Aggarwal

...Petitioner

Versus

Adarsh Kaul

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amit Jain, Advocate
for the petitioner.

Mr. Chetan Mittal, Senior Advocate with
Mr. Mohinder S. Nain, Advocate
for the respondent.

ANIL KSHETARPAL, J.(Oral)

Tenant-petitioner is in the revision petition against the order passed by the learned Rent Controller dismissing the application for permission to amend the application for leave to defend.

In the East Punjab Urban Rent Restriction Act, 1949, the Legislature has made a provision for expeditious eviction of buildings owned by non-resident Indians. Section 13-B enables a non-resident Indian to file a petition for recovery of immediate possession of residential or scheduled or non-residential buildings. Procedure to deal with the aforesaid petition has been provided under Section 18-A of the aforesaid Act.

In the present case, landlord-respondent filed two petitions, one was filed against the petitioner namely Arunesh Aggarwal seeking eviction from the ground floor of the residential house No.513, Sector 11-B,

In the aforesaid petition itself the landlord had also disclosed that he is filing a separate petition against Tirupati Adhesive Private Limited, a limited company, with regard to annexe portion on the first floor. Tenant after service filed an application for leave to defend and in Para 3 of the application, it was pleaded as under:-

“The respondent was inducted as a tenant in the demised premises in the year 1995 initially at a monthly rental of Rs.4000/- which was increased to Rs.6500/- and Rs.7000/- and later on to Rs.7150/- in terms of lease deed dated 31.12.1998 and was subsequently enhanced to Rs.8652/-.”

Landlord also filed their separate petition against Tirupati Adhesive Private Limited, an incorporated company, with respect to annexe portion of the first floor. In the aforesaid petition, tenant filed an application seeking leave to defend and pleaded that lease of ground floor as well as annexe portion of the first floor has merged and, therefore, two petitions were not maintainable. It was sought to be pleaded that the rent is being paid by Hindustan Distributors, which is a sole proprietorship of Arunesh Aggarwal.

Learned Rent Controller dismissed the application after noticing that such amendment would result in withdrawal of the admission made by the tenant in the application for leave to defend. This order has been challenged in the present revision petition.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the documents filed, which are

part of the paper-book.

Learned counsel for the petitioner submitted that the case is at its initial stage and when the application for amendment was filed even reply to the application for leave to defend was not filed. He submitted that rent of both the premises is jointly being paid through a single bank transaction from the account of Hindustan Distributors. Hence, he submits that the application should have been allowed.

On the other hand, learned counsel for the respondent-landlord has submitted that Tirupati Adhesive Private Limited is an incorporated company having separate legal entity and, therefore, there cannot be any merger of tenancy merely because rent is coming from one bank account.

This Court has considered the submissions made by learned counsel for the parties. As per Section 2(a), building means any building or a part of a building let out for any purpose whether being actually used for that purpose or not. So it is clear that even a part of building let out separately is a building for the purposes of this Act.

In the present case, admittedly two different oral lease were created, at different point of time, one in favour of petitioner-Arunesh Aggarwal and second in favour of Tirupati Adhesive Private Limited. Merely because the rent is being jointly paid from the account of Hindustan Distributors, there cannot be any merger of the tenancy.

Still further, as rightly noticed by the Rent Controller, once tenant has taken a definite stand in the application for leave to defend that the tenant was inducted in the demised premises in the year 1995 and thereafter rent has been revised and at present it is Rs.8,652/-, he cannot be

permitted to resile therefrom. Now, it does not lie in the mouth of the tenant to assert that there is any merger of the tenancy. The aforesaid plea is clearly an after thought.

Still further, as rightly contended by learned counsel for the respondent-landlord, the other tenancy is in favour of a private limited Company and not in the name of the petitioner-tenant.

For the reasons aforesaid, this Court does not find any good ground to interfere.

Revision petition is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the above said judgment.

23.08.2018
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No