

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 8861 of 2017 (O&M)
Date of Decision : 21.03.2018

Sohan Singh

....Petitioner

Versus

M/s Pratap Mills and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ashok Aggarwal, Sr. Advocate with
Mr. S.S. Narula, Advocate
for the petitioner.

Mr. Kunal Mulwani, Advocate
for the respondents.

Surinder Gupta, J.

This is revision against order dated 09.11.2017 passed by learned Rent Controller, Khanna, dismissing application of revision-petitioner seeking dismissal of ejectment petition at initial stage on the ground as follows:-

“2. *That the present ejectment petition is filed by the petitioners by concealing the true and material facts from the Hon'ble Court. The real facts are that a Rent Appeal No. 1 of 20.10.1992, decided on 11.6.96 by the Hon'ble Court of Shri M.L. Sarpal, Appellate Authority Ludhiana, on the various grounds mentioned by petitioners in the present ejectment petition. The Hon'ble Court of Shri M.L. Sarpal, Appellate Authority, Ludhiana decided the rate (sic. of rent) of the premises in question at the rate of ₹30/- per month vide his order dated 11.6.96. Photostat copy of the order dated 11.6.96*

is attached herewith the application and further decided the issue of subletting. The present ejectment petition is also not fulfilling the requirements of Section 69 of the Indian Partnership Act and under Section 30 CPC. The petitioner has also not stated whether the firm is registered or not. Shri Sukhwant Rai has no authority from the other partners to give power of attorney to Ashwani Gupta. Moreover the names of other partners are not disclosed.”

2. Learned Rent Controller has observed that present ejectment petition has been filed by respondents seeking ejectment of revision-petitioner on the ground of material alteration, *bona fide* necessity besides ground of subletting. In the earlier petition filed by landlords-respondents, he had raised the plea of subletting, which was discarded. Regarding the plea of revision-petition that ejectment application is not fulfilling the requirement of Section 69 of Indian Partnership Act and Section 30 CPC, it was observed that ejectment petition does not fall under the purview of Section 69 of the Indian Partnership Act, as a partner is deemed to be representative of a partnership firm and can file the ejectment petition. The question regarding existence of M/s Pratap Mills is a question of fact and requires evidence.

3. Learned counsel for the petitioner has argued that in earlier ejectment petition, Appellate Authority, Ludhiana has recorded finding that he found merit in submission raised by tenant that the tenancy of land and super structure cannot be bifurcated and Sukhwant Rai has no *locus standi* to file the ejectment petition on this ground. In view of above finding,

Sukhwant Rai has no authority to file the ejectment petition. He has further argued that the finding of learned Rent Controller recorded in earlier petition regarding subletting and rate of rent has attained finality, as such, cannot be re-agitated in this petition and learned Rent Controller while dismissing the application has observed that the present ejectment petition is maintainable and this is a finding on merit, which could not be recorded at this stage.

4. Learned counsel for respondents has argued that ejectment petition was filed in the year 2015 and till date revision petitioner is prolonging proceedings before learned Rent Controller on one ground or the other and has not even filed the written statement. Application (Ex. P-1) was also filed before learned Rent Controller only with a view to delay proceedings. On merit, he has argued that in the judgment of Appellate Authority recorded in earlier ejectment petition, there is specific finding that relationship of landlord and tenant is proved between Sukhwant Rai and Sohan Singh (revision-petitioner) since the year 1971. In view of above finding, the revision-petitioner is debarred from taking the plea that Sukhwant Rai despite being a landlord is not competent to file the petition seeking ejectment of tenant from the demised premises on the ground of material alteration in the tenanted premises and his personal *bona fide* necessity.

5. Much emphasis has been put on the fact that the Appellate Authority while hearing the appeal in earlier ejectment petition (Rent Appeal No. 1 of 20.10.1992) has taken note of the argument of counsel for the tenant-appellant in that appeal that tenancy cannot be bifurcated as the underneath land over which shop has been constructed has been purchased

by Bhoop Chand and Hans Raj and structure over it is owned by respondent and observed that it finds merit in this submission.

6. The above contention of learned counsel for the revision-petitioner has no merit as title of the suit property is not a question to be commented upon by learned Rent Controller, when it has reached a specific finding that there exists relationship of landlord and tenant between the parties. As a sequence of above finding in Rent Appeal No. 1 of 1992 that revision-petitioner is a tenant under the respondent, application seeking ejectment on the ground as provided in the East Punjab Urban Rent Restriction Act, 1949 is competent and maintainable.

7. So far as application of provisions of Section 69 of Indian Partnership Act is concerned, the ejectment petition, is not a dispute between partners and the petition filed under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 does not relate to any right arising out of a partnership contract. Even otherwise, the competence of a firm or a partner to file a petition, is a matter of fact, which can be decided at final stage and not at this stage. In impugned order learned Rent Controller has answered the plea raised by revision-petitioner and the observations therein are only for the purpose of disposal of application and not on merit of the case.

8. On perusal of order passed by learned Rent Controller, I find no legal or factual infirmity therein calling for any interference in this revision petition, hence dismissed.

9. I agree with the submission of learned counsel for respondents that proceedings before learned Rent Controller are being unnecessarily delayed. Even after more than two years of filing of petition written

statement has not been filed by the tenant.

10. Learned Rent Controller is directed to expedite disposal of the ejectment petition and to decide the same at the earliest, preferably within a period of one year of the receipt of copy of this order.

March 21, 2018
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No