

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 2893 of 2018 (O&M)

Reserved on 19.5.2018

Date of decision: 1.6.2018

Kanwaljit Kaur

..... Appellant

Versus

Jagjit Kumar

.....Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present : Mr. Inderjit Sharma, Advocate, for the appellant.

GURVINDER SINGH GILL J.

1. The appellant-landlady challenges judgment and decree dated 14.12.2017 passed by the learned District Judge, Pathankot whereby dismissal of her suit for ejectment of respondent-tenant by the lower Court has been upheld.
2. The appellant-landlady had filed civil suit for ejectment of respondent-tenant from the residential premises let out by her to the respondent on monthly rent @ ₹ 1200/- per month. A powerful bomb explosion had taken place in one of the shops situated adjacent to the rented premises as a result of which the entire structure of the shops had collapsed and one Madan Lal who was tenant in the shop lost his life. After the said explosion, the tenant had stopped paying rent of the demised premises and though he had been asked to vacate the premises to enable the landlady to reconstruct the same but he refused to vacate. Consequently, the appellant-landlady served notice dated 25.2.2011 in terms of Section 106 of the Transfer of Property Act terminating tenancy of

the respondent and asking him to vacate the premises by 31.3.2011 and to pay arrears of rent.

3. The respondent resisted the suit and filed written statement *inter-alia* taking an objection that there was no relationship of landlady and tenant and that there had been minor damages to the structure of the premises on account of bomb blast.
4. The parties were put to proof on the following issues :-
 - i) Whether the plaintiff is entitled to ejectment as prayed for? OPP
 - ii) Whether the plaintiff is entitled to recovery of Rs.15,600/- as prayed for? OPP
 - iii) Whether the suit is not maintainable? OPD
 - iv) Relief.
5. Upon appraisal of the evidence on record, the learned lower Court reached at a conclusion that the civil suit was not maintainable as the demised premises on account of revision of municipal limits during pendency of the suit now fall under the Municipal Corporation, Pathankot and as such, the plaintiff could seek relief of ejectment under provisions of the East Punjab Urban Rent Restriction Act, 1949. In appeal, the said findings were upheld by the Court of learned District Judge vide impugned judgment dated 14.12.2017 which has been challenged by the landlady by way of present appeal.
6. The learned counsel for the appellant while assailing the impugned judgment and decree has submitted that since at the time when the civil suit had been instituted, the provisions of the East Punjab Urban Rent Restriction Act, 1949 were not applicable, therefore, the civil suit could not have been dismissed on ground of maintainability due to variation in municipal limits at a subsequent

stage. As such, modification of municipal limits could not have been made with retrospective effect. The learned counsel cites judgment of Hon'ble Supreme Court reported as 2002(1) RCR (Rent) 605 Mansoor Khan vs. Motiram Harebhan Kharat wherein while considering the applicability of Rent Act to a certain area, having been declared a municipal area, it was held that the applicability will be with prospective effect and will not apply to pending cases and will not take away the power of the Court to pass a decree of eviction in a pending suit. The learned counsel also places reliance upon another judgment of Hon'ble Supreme Court reported as 2016(2) RCR (Rent) 413 -Rajender Bansal & Ors. vs. Bhuru (D) Thr. Lrs. & Ors. wherein it was held that the rights of the parties get crystallised on the date of the institution of the suit and that the law applicable on the date of filing of the suit would continue to govern such suit.

7. I have considered the aforesaid submissions and have also perused the cited judgments.
8. A perusal of Rajender Bansal's case (supra) shows that the Hon'ble Apex Court, while discussing earlier case law on the subject, culled out the following principles:-

“16) From the aforesaid discussion in Atma Ram Mittal, Vineet Kumar, Ram Saroop Rai, Ramesh Chandra and Shri Kishan alias Krishna Kumar cases, the apparent principles which can be culled out, forming the ratio decidendi of those cases, are as under:

- i) Rights of the parties stand crystallised on the date of the institution of the suit and, therefore, the law applicable on the date of filing of the suit will continue to apply until suit is*

disposed of or adjudicated.

- ii) If during the pendency of the suit, Rent Act becomes applicable to the premises in question, that would be of no consequence and it would not take away the jurisdiction of civil court to dispose of a suit validly instituted.*
- iii) In order to oust the jurisdiction of civil court, there must be a specific provision in the Act taking away the jurisdiction of the civil court in respect of those cases also which were validly instituted before the date when protection of Rent Act became available in respect of the said area/premises/tenancy.*
- iv) In case aforesaid position is not accepted and the protection of the Rent Act is extended even in respect of suit validly instituted prior in point of time when there was no such protection under the Act, it will have the consequence of making the decree, that is obtained prior to the Rent Act becoming applicable to the said area/premises, inexecutable after the application of these Rent Act in respect of such premises. This would not be in consonance with the legislative intent.”*

9. A perusal of the aforesaid para (iii) shows that while the general rule is that the parties have to be governed by the law applicable as on the date of filing of suit but in case there is a specific provision in the Act, taking away jurisdiction of the civil court even in respect of the cases which have been validly instituted, then the jurisdiction of the civil court may be ousted.

10. It is not in dispute that the notice under provisions of Section 106 of the Transfer of Property Act was issued by the appellant-landlady on 25.2.2011 and the suit was filed thereafter on 19.4.2011. A notification dated 28.10.2013(Ex.D-1) was issued whereby the area of Mamun in which the

demised property falls was included within the revised limits of Municipal Corporation, Pathankot. At this stage, it will be apposite to refer to provisions of Section 13 (1) of the East Punjab Urban Rent Restriction Act, 1949 which for the sake of ready reference are reproduced below :-

“13. Eviction of tenants.

(1) A tenant in possession of a building or rented land shall not be evicted therefrom in execution of a decree passed before or after the commencement of this Act or otherwise and whether before or after the termination of the tenancy, except in accordance with the provisions of this Section, or in pursuance of an order made under Section 13 of the Punjab Urban Rent Restriction Act, 1947, as subsequently amended.”

11. The scope of application of Rent Act, as is evident from perusal of Section 13 of the East Punjab Urban Rent Restriction Act, 1949 was intended to be wide so as to include even the cases of executions pending in respect of decrees for ejectment passed prior to commencement of the Act. The exception culled out in sub-para(iii) of Para 16 of Rajender Bansal's case read along with provisions of Section 13 of the East Punjab Urban Rent Restriction Act, 1949 would clarify that provisions of the Rent Act, would be attracted even to cases already pending. In other words, the jurisdiction of Civil Court will stand ousted.
12. The broad proposition of law laid down in Rajender Bansal's case (*supra*) that rights of parties get crystalised on that date of institution of suit can certainly not be doubted, but the said principle would not be attracted in the present case inasmuch as the factual position in Rajender Bansal's case is distinct on account of a different set of provisions pertaining to applicability of

respective legislations as regards ejection of tenants.

13. In Rajender Bansal's case, Hon'ble the Supreme Court dealt with a case under Haryana Urban (Control of Rent & Eviction) Act, 1973 wherein while the grounds for ejection are identical as under the East Punjab Urban Rent Restriction Act, 1949 but the language is different worded. Section 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1973 and also of the East Punjab Urban Rent Restriction Act, 1949 are reproduced below to facilitate comparison of the distinct material provisions :-

The East Punjab Urban Rent Restriction Act, 1949	The Haryana Urban (Control of Rent & Eviction) Act, 1973
“13. Eviction of tenants. (1) A tenant in possession of a building or rented land shall not be evicted therefrom <u>in execution of a decree passed before or after the commencement of this Act</u> or otherwise and whether before or after the termination of the tenancy, except in accordance with the provisions of this Section or in pursuance of an order made under Section 13 of the Punjab Urban Rent Restriction Act, 1947, as subsequently amended.	“13. Eviction of tenants. (1) A tenant in possession of a building or a rented land shall not be evicted therefrom except in accordance with the provision of this section.”

14. A perusal of the aforesaid provisions would reveal that under the said Haryana Act, the words - “before or after the commencement of the Act”, are conspicuously missing. Hon'ble the Supreme Court in Rajender Bansal's case

(*Supra*) by carving out an exception in sub-para(iii) of Para 16 has virtually acknowledged the intent of legislation to increase the scope of application of the Rent Act, wherever there is a specific provision to this effect. The words “in execution of a decree passed before or after the commencement of this Act” as existing in Section 13 of the East Punjab Urban Rent Restriction Act, 1949 certainly denote a wide application of the Act. The commencement of the Act for the purpose of applicability of Section 13 of the Act, apart from date of commencement of the Act itself, has to be reckoned in relation to date of applicability of the Act to an area. The application of the Act to the area where the demised premises are situated i.e. Mamun, stood extended w.e.f. 28.10.2013 when the Municipal limits were revised and since the civil suit was still pending, therefore, the jurisdiction of civil Court stood ousted.

15. In view of the discussion made above, the suit filed by the appellant-landlady for ejectment of respondent-tenant in terms of Section 106 of the Transfer of Property Act could not proceed. There is no infirmity in the findings of the learned lower Court and as affirmed by the learned Appellate Court to this effect so as to warrant any interference in the same.
16. There is no merit in this appeal and the same is hereby dismissed.

(Gurvinder Singh Gill)
Judge

1.6.2018
Kamal

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No