

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

RSA-3117-2018 (O&M)
Date of Decision:-18.5.2018

Rajinder Pal

... Appellant

Versus

Kulwant Singh Bakshi (since deceased) through LRs ... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Pankaj Jain, Advocate for the appellant.

GURVINDER SINGH GILL, J.

1. The appellant-defendant assails judgment dated 5.4.2018 passed by Additional District Judge, SAS Nagar Mohali, whereby his appeal against decretal of suit of the plaintiff, as regards recovery of arrears of rent, has been dismissed.
2. The case set up by the respondent-plaintiff is that, he had let out a house situated in Mohali, Punjab to the appellant/defendant on rent @ ₹ 12,000/- per month and a rent agreement had also been executed but since the tenant had defaulted in paying the rent, he was constrained to file an ejectment application in terms of provisions of Section 13 of the East Punjab Urban Rent Restriction Act, 1949, which was accepted and the tenant was ordered to be ejected from the house in question. It is further the case of the plaintiff that pursuant to the ejectment order, the appellant/defendant handed over

vacant physical possession of the premises in question on 28.2.2015 to the respondent but the rent for the period January 2013 to February 2015 remained unpaid, for which the respondent/plaintiff filed the present suit.

3. The suit was contested by the appellant/defendant but the learned trial Court held that the appellant/defendant was in arrears of rent for the period January 2013 to February 2015 @ ₹ 12,000/- per month and thus decreed the suit of the respondent/plaintiff for recovery of ₹ 3.12 lacs alongwith interest @ 9% per annum. The said judgment was affirmed by the learned Additional District Judge, SAS Nagar, Mohali vide judgment dated 5.4.2018, which has been challenged by way of filing the present appeal.
4. The learned counsel for the appellant, while assailing the impugned judgment, has submitted that there is no convincing evidence on record that the appellant was actually in arrears of rent and that the learned lower Court erred in returning a finding to this effect mainly on account of omission on the part of the tenant to produce any rent receipts, whereas it was never the case of the landlord that he used to issue rent receipts on account of the rent received by him.
5. I have considered the aforesaid submissions. In the present case, the tenant in question had been ejected from the demised premises on account of non-payment of rent, which itself suggests that the tenant had paid the rent in question. In any case, in order to rebut the assertion of the landlord, who had specifically deposed that the tenant was in arrears of rent, the tenant could have led some evidence to substantiate that he had paid rent for the period in question but the tenant not having led any evidence in this regard, the findings of the lower Court to this effect do not warrant any interference.

6. It has next been submitted by learned counsel for the appellant that the suit in question was not maintainable, as the same had been filed by son of the landlord purporting to be a Special Power of Attorney of the owner i.e. of his father, whereas, the said Special Power of Attorney had been given by his father to pursue the ejectment application and not the present recovery suit.
7. I have considered the aforesaid submission and have also perused the said Special Power of Attorney, copy whereof has been shown to this Court by learned counsel for the appellant. A perusal of the Special Power of Attorney indicates that the plaintiff Kulwant Singh Bakshi had appointed his three sons including Manmohan Singh Bakshi by way of executing Special Power of Attorney on 23.11.2013 authorizing them to do all the necessary acts in respect of his Court case pending at Chandigarh, against the property bearing House No.2046, Sector-71, Mohali, Punjab. The relevant extract from the said Special Power of Attorney is reproduced below:-

“.....as my lawful Special Power of Attorney to act as such in my name and behalf and do the following acts, deeds or things in respect of my court case pending in Chandigarh Court against the property bearing No.H.No.2046, Sector-71, Mohali Punjab or any other concerned that is to say.....”

8. First of all I find that the mentioning of Chandigarh Court instead of mentioning SAS Nagar, Mohali Court, where the ejectment petition was pending, is apparently an error since the property in question, the details whereof are mentioned in the Special Power of Attorney, is a residential house in Mohali, Punjab. The litigation in respect of the said house would normally be in the Courts at Mohali, which would have jurisdiction. In any

case, it is not disputed that the said Special Power of Attorney was given during the pendency of the ejectment petition pending in the Court at Mohali, Punjab.

9. A perusal of other recitals in the Special Power of Attorney indicate that the executant had authorized his sons to do all that was necessary for pursuing his case and to take any decision for or on his behalf. Para No.8 of the aforesaid Special Power of Attorney authorizes “generally” his sons to do all such acts, deeds or things, which are deemed to be just fit in the circumstances of the said case jointly or severally. The executant was aged about 90 years and as such he had appointed his sons to pursue his case on his behalf. The present case for recovery of the arrears of rent is virtually an off-shoot of the ejectment application, wherein the tenant having been found in arrears of rent, was ordered to be ejected. It was pursuant to the said findings of the tenant being in arrears of rent that present recovery suit was filed. As such, it is held that Manmohan Singh Bakshi, through whom the present suit was filed, was duly authorized to institute the suit in question.
10. No other point has been raised or urged before this Court. I do not find any infirmity in the impugned judgment and the same is hereby upheld. Finding no merit in the present appeal, the same is hereby dismissed.

18.5.2018

pankaj

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned Yes / No

Whether Reportable Yes / No