

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Civil Revision No. 1054 of 2018(O&M)

Date of Decision: September 10 , 2019.

Harish Chander PETITIONER (s)

Versus

Manjit Singh Gulati and another RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Naveen Bawa, Advocate
for the petitioner.

Ms. Monika Thakur, Advocate
for the respondent/caveators.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

Petitioner-tenant has preferred this revision petition challenging order dated 16.09.2015 passed by the learned Rent Controller, Ludhiana as well as judgment dated 28.08.2017 passed by the learned Appellate Authority, Ludhiana, whereby his ejectment from the demised premises has been ordered.

Brief facts necessary for the adjudication of the case are that, respondents-landlords filed a petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (for short, the 'Act') seeking eviction of the present

petitioner from the demised premises, as described in the petition. It is pleaded that Rajinder Singh and Kulwinder Singh were the original owners of the demised premises. Respondent No.1 in the present petition, purchased the property in December 2002 from said Rajinder Singh and Kulwinder Singh, through property dealers, namely, Som Nath and Bajrangi Lal. The consideration amount was paid to the owners. An agreement in respect to the full and final payment was also executed in favour of respondent No.1. General power of attorney was executed in favour of respondent no.1, who is husband of respondent No.2. Sale-deed dated 15.01.2010 was executed by respondent No.1 in favour of his wife, respondent No.2. Mutation of the property was duly sanctioned. Present petitioner is stated to be the tenant in the property in question. Petitioner-tenant is pleaded to have taken the premises from Rajinder Singh and Kulwinder Singh on a monthly rent of ₹3,500/-, besides, electricity and water charges. Present petitioner acknowledged the respondents to be his landlords and started paying rent at the rate of ₹3,500/- per month, besides, electricity and water charges. However, the petitioner is claimed to be in arrears of rent since 01.12.2005. Ejectment of the petitioner was sought on account of non-payment of arrears of rent as well as personal bonafide necessity of the landlords, as respondent No.1 sought to open a clinic at the tenanted premises. It is further stated that they did not own or possess any other non-residential premises within the municipal limits of Ludhiana. Legal notice dated 12.05.2011 was served upon the petitioner, but to no avail. Hence, the petition was filed.

Petitioner resisted the petition. In his written statement, the petitioner took various preliminary objections. Relationship of landlord and tenant between

the parties was denied. The petitioner claimed to be the owner-in-possession of the demised premises on the basis of an agreement to sell, purportedly executed between the present parties in the year 2004 for a total consideration of ₹1,50,000/-. The present petitioner, it is submitted, paid a sum of ₹96,000/- as earnest money at the time of execution of the said agreement to sell and possession of the property was delivered to him in part performance of the agreement to sell. The petitioner claimed to have installed an electric and water connection in the property after taking possession. Remaining amount of ₹54,000/- was paid by the present petitioner in installments to the respondents in this case. However, no receipt in this respect was issued. The respondents alongwith other persons are alleged to have trespassed into the house, beaten up the present petitioner and his family members and stolen the agreement to sell executed between the parties alongwith other valuables. Dismissal of the petition was prayed for.

Following issues were framed by the learned Rent Controller on the basis of pleadings of the parties:-

1. Whether the respondent is in arrears of rent at the rent of Rs.3500/- per month since 01.12.2005, if so its effect? OPP
2. Whether the tenancy premises is required by the petitioners for their own use and occupation, if so its effect? OPP
3. Whether there is no relationship of landlord and tenant between the petitioner and respondent? OPR
4. Whether the petitioner has not come to the court with clean hands and has suppressed the material and true facts from this court, if so its effect? OPR
5. Whether the present petition is counter blast to the civil suit of the injunction filed by the respondent, if so its effect? OPR

6. Whether the petitioner has no locus standi to file the present suit against the respondent? OPR
7. Whether the present petition is mere abuse of process of law and filed just to harass the respondent? OPR
8. Whether the petitioner is estopped by his own act and conduct from filing the present suit against the respondent? OPR
9. Relief.

Learned Rent Controller, Ludhiana on considering the facts and evidence, concluded that the relationship of landlord and tenant between the parties is proved on record. Purported agreement to sell, executed between the petitioner and the respondents never saw light of the day, therefore, plea raised by the petitioner was found to be unsubstantiated. The petitioner was found to be in arrears of rent to the tune of ₹89,750/-. Personal bonafide necessity of the landlord was also found to be proved. Therefore, ejectment petition was allowed on account of arrears of rent as well as personal bonafide necessity of the landlord. Appeal filed by the present petitioner was dismissed by the learned Appellate Authority, Ludhiana vide judgment dated 28.08.2017.

Aggrieved therefrom, the present revision petition has been filed.

Learned counsel for the petitioner vehemently argues that both the learned counsel below have grossly erred in allowing the petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 filed by the respondent-landlords. It is contended that, first and foremost, the relationship of landlord and tenant is not established by the evidence on record. The original owners –Rajinder Singh and Kulwinder Singh of the property in question, it is submitted, had executed a general power of attorney in the year 2002 in favour of respondent

No.1. Thereafter, respondent No.1 entered into an agreement dated 20.1.2004 for selling the demised premises to the petitioner. The entire consideration amount of ₹1,50,000/- agreed upon between the parties, was paid to respondent No.1. ₹96,000/- was paid as earnest money at the time of the agreement to sell and remaining amount of ₹54,000/- was paid to respondent-landlords in various instalments. However, respondent No.1 in a mala-fide manner executed a registered sale-deed dated 05.01.2010 in favour of his wife, respondent No.2. When the present petitioner asked respondent No.1 to execute the agreement to sell dated 20.01.2004, he flatly refused to do so. The respondents alongwith other persons trespassed into the house of the present petitioner and caused injuries to him as well as his family members and stole the relevant documents including the agreement to sell dated 20.01.2004 in his favour, on 21.04.2010. A complaint dated 16.11.2011 (Ex.R1) was preferred by the petitioner. It is thereafter that the ejectment petition was filed by the respondent-landlords on 20.01.2012. It is thus submitted that mala-fide intention on the part of the respondents is apparent. There is no question of any arrears of rent due towards the respondent-landlords as held by the learned courts below, especially in the wake of agreement to sell dated 20.01.2004. It is further submitted that merely because suit for specific performance was not earlier filed by the petitioner, cannot be of any benefit to the respondent-landlords.

Learned counsel for the petitioner submits that an application under Order 41 Rule 27 CPC has been filed for placing on record the agreement to sell dated 21.01.2004 executed by respondent No.1 in favour of the petitioner in respect to the demised premises. Said application, CM No.5118-CII of 2018

should be allowed and the agreement to sell dated 21.01.2004 be taken on record. It is further submitted that no personal bona-fide necessity is proved on the basis of evidence led by the respondent-landlords. It is thus prayed that this revision petition be allowed and impugned judgments be set aside.

Learned counsel for the respondents, per contra, submits that both the learned courts below have rendered well reasoned and logical judgments based on proper appreciation of the evidence on record. Relationship of landlord and tenant between the parties is proved by the evidence on record. Petitioner merely concocted a story of execution of agreement to sell dated 20.01.2004. It is not believable that in case the entire consideration amount had been given by the petitioner, he would not have taken any steps, whatsoever, for execution of the sale-deed in his favour. It is denied that a sum of ₹1,50,000/- was ever paid to the respondent-landlords. The criminal complaint, it is submitted, has been filed with a mala-fide intention after a lapse of 22 months of the occurrence in question. Personal bona-fide necessity of the respondent-landlords is clearly made out. It is thus prayed that this revision petition be dismissed.

I have heard learned counsel for the parties and have gone through the file with their assistance.

Title of the respondents in respect to the demised property is duly proved on record. In fact, the petitioner himself is claiming to derive title on the basis of agreement to sell, which he entered into with respondent No.1 in respect to the property in question. It is proved on record that the original owners of the property were Rajinder Singh and Kulwinder Singh from whom the property was purchased by the respondents in December 2002. A power of attorney was

executed by Rajinder Singh and Kulwinder Singh in favour of respondent No.1. Sale-deed dated 15.01.2010 was registered in favour of respondent No.2 i.e., the wife of respondent No.1. Mutation of the property was duly sanctioned. The present petitioner was admittedly a tenant in the demised premises under the original owners Rajinder Singh and Kulwinder Singh and he continued to be in possession of the property under the respondents. The plea raised by the present petitioner in respect to his claim to the title of the property on the basis of an agreement to sell arrived at between the petitioner and the respondents, has been rightly negated by both the learned courts below. Apart from the fact that such an agreement to sell never saw the light of the day, it is opposed to all probabilities that the petitioner would have waited for such long years for the execution of the sale-deed in respect thereof. The story set-up by the petitioner that the respondents alongwith other unsavoury elements had trespassed into their premises and stolen the original agreement to sell, has also been rightly negated. It is a matter of record that no action was taken immediately after the alleged incident. The criminal complaint (Ex.R1) stated to have been filed in this respect, was admittedly filed after about 22 months of the said occurrence. There is clearly no explanation for the same.

The petitioner has sought to place on record the purported agreement to sell 21.01.2004 by way of additional evidence, at this stage. It is stated in the application (CM No.5118-CII of 2018) that the petitioner could lay his hands on a photocopy of the said agreement from his house situated at village Belarahi, Tehsil Jhanjharpur, District Madubani (Bihar). Said application is clearly devoid of any merit in the factual matrix of this case. It is matter of record that the

petitioner in any case cannot claim any benefit on the basis of the alleged agreement to sell. No palpable reason is forthcoming for allowing the application for additional evidence as prayed for. CM No.5118-CII of 2018 is accordingly dismissed. It is relevant to note, at this stage, that the learned courts below have rightly observed that the petitioner, neither in his written statement nor in his deposition revealed any detail about the date, month or even year of the payment of the alleged installments of the remaining amount of ₹54,000/- as alleged. It is further a matter of record that there is no evidence on record to prove the payment of ₹96,000/- as earnest money as claimed. At this stage, it is pertinent to note that the petitioner has testified as RW1. He has duly admitted the transfer of title by Rajinder Singh and Kulwinder Singh in favour of the respondents. In respect to the agreement to sell dated 21.01.2004 in his favour by the respondents, he has stated that a suit for specific performance was filed by him, but a copy of the same was never produced on record. It is rightly observed by the learned courts below that the reliability and credibility of the said witness is under a cloud. In the given facts and circumstances, the learned courts below have rightly held the petitioner to be a tenant under the respondents and in arrears of rent. It is further rightly held that the personal bonafide necessity of the landlord i.e., opening of a clinic and laboratory in the tenanted premises is proved on record. In my considered opinion, both the learned Rent Controller and the learned Appellate Authority have rendered well reasoned and logical decisions dated 16.09.2015 and 28.08.2017, respectively, after proper appreciation of the evidence on record.

Hon'ble Supreme Court in Hindustan Petroleum Corporation

Limited v. Dilbahar Singh, (2014) 9 SCC 378 while delineating the scope of revisional jurisdiction of the High Court, where two courts have returned concurrent findings of fact, has observed that the High Court would normally not interfere in concurrent findings of fact until and unless it is shown that there is gross misreading of evidence or ignoring of material evidence on record which renders the finding of the courts below to be perverse. Learned counsel for the petitioner is unable to point out any illegality, perversity, infirmity or misreading of any evidence in the impugned order dated 16.09.2015 passed by the learned Rent Controller, Ludhiana and judgment dated 28.08.2017 passed by the learned Appellate Authority, Ludhiana, which call for any interference by this Court in exercise of revisional jurisdiction.

No other argument has been raised.

Revision petition is accordingly dismissed with no order as to cost. However, the petitioner is afforded a period of one month to handover the vacant, peaceful possession of the premises in question.

Any other pending applications also stand disposed of.

September 10 , 2019.
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(**LISA GILL**)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No