

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

Civil Revision No. 3236 of 2004 (O&M)

Date of decision : February 14, 2019

Moorti Shri Sita Ram

.....Petitioner

Versus

M/s Amar Metal Works and another

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Harsh Goyal, Advocate for
Mr. Tribhawan Singla, Advocate
for the petitioner.

Mr. Namit Khurana, Advocate
for the respondents.

LISA GILL, J.

Petitioner – landlord is aggrieved of judgment dated 02.06.2003 passed by the learned Rent Controller, Jagadhri whereby his petition under Section 13 of the Haryana Control of Rent and Eviction Act, 1973 (for short - 'the Act') has been dismissed. The petitioner also challenges judgment dated 01.04.2004 passed by the learned Appellate Authority, Jagadhri whereby his appeal against decision dated 02.06.2003 has also been dismissed.

Brief facts necessary for adjudication of the case are that the petitioner – landlord filed a petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (for short - 'the Act') seeking ejectment of the respondent from the rented property after removal of all kind of encroachments made thereon, as described in the petition. Grounds on which ejectment was sought were:

(i) Non-payment of arrears of rent from 20.12.1996 till 06.03.1998 and thereafter till 05.12.1999.

(ii) Non-payment of house tax.

(iii) Subletting the premises by respondent No. 1 to respondent No. 2.

The petition was resisted by the respondents.

Following issues were framed by the learned Rent Controller:-

1. Whether the respondent is liable to be ejected from the premises in question on the ground of arrears of rent?OPP
2. Whether the respondent is liable to be ejected on the ground of subletting of half portion of the disputed property to respondent No. 2 as alleged?OPP
3. Whether the petition is not maintainable in view of the compromise dated 06.03.1998 and rent note dated 06.03.1998?OPP
4. Whether the petitioner is legally estopped from claiming any arrears on account of rent for the period before 05.03.1998 by his own power of attorney act and conduct?OPR
5. Relief.

Evidence was led by both the parties.

Learned trial Court on considering the evidence on record, facts and circumstances concluded that rent for the period from 20.12.1996 to 05.03.1998 stood paid, prior to the filing of the petition as per the compromise 'Mark A' which was effected between the parties. Rent for the period of 06.03.1998 to 05.02.1999 was tendered in Court, therefore, the ground of arrears of rent did not survive with the petitioner. It was further concluded that there was no evidence on record to prove that house tax in this case was ever imposed by the Municipal authorities in respect to the demised premises, which are admittedly referred to as a vacant plot as per the rent deed (Ex.A3). Furthermore, it was held that the petitioner failed to prove any subletting of the premises by respondent No. 1 to respondent No. 2. Accordingly, petition filed by the landlord was dismissed. Appeal

preferred by the petitioner was also dismissed by the learned appellate Authority, Jagadhri vide impugned judgment dated 01.04.2004.

Aggrieved therefrom, present petition has been filed.

Learned counsel for the petitioner vehemently argues that both the learned courts below have grossly erred in dismissing the petition filed by the petitioner. Respondents are liable to be evicted from the premises in question. The rent for the period till 05.03.1998, it is stated, was deficient, therefore, could not be termed to be a valid tender. Moreover, non payment of house tax is proved on record. Learned appellate Authority has erred in observing that no notice regarding payment of house tax was issued. No separate notice was required in view of the specific clause in the rent note itself. It was the duty of the tenant to pay the house tax along with the other levies as may be. Learned appellate Authority wrongly ignored the documents in regard to the issue of house tax furnished before it, by the petitioner, on the ground that they were not produced before the learned Rent Controller nor any application for additional evidence was moved. The petitioner, it is submitted, in the present revision petition has moved an application for additional evidence for producing the house tax assessment register for the year 1999-2000, house tax notice for the years 2001-02 and 2002-03, house tax payment receipts dated 10.04.2002 and 18.06.2003 deposited by the petitioner with the Municipal Council, Jagadhri. It is submitted that it is entirely due to an inadvertent error on the part of the petitioner that the said documents could not be brought before the learned courts below. It is further argued that subletting on the part of the tenant is proved as well. Merely because respondent No. 2 (person to whom subletting is alleged) is the son of Amarjit Singh, does not lead to an

inference that there is no subletting of the premises. It is, thus, prayed that this petition be allowed and judgment dated 02.06.2003 passed by the learned Rent Controller, Jagadhri as well as judgment dated 01.04.2004 passed by the learned Appellate Authority, Jagadhri be set aside. Consequently, petition under Section 13 of the Act filed by the petitioner be allowed and eviction of the respondents be ordered.

Learned counsel for the respondents, however, refutes the above said averments while submitting that both the learned courts below have rendered well reasoned and logical judgments on the basis of evidence on record. It is prayed that this petition be dismissed.

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

In respect to the ground of non-payment of arrears of rent, learned counsel for the petitioner is unable to deny that the arrears for the period till 05.03.1998 stood paid in separate proceedings. In the present case, valid tender of the rent was made before the learned Rent Controller.

Argument of learned counsel for the petitioner to the extent that inadequate tender was made is not substantiated by the evidence on record. Compromise dated 06.03.1998 was effected between the parties and rent note dated 06.03.1998 (Ex.A3) was executed. It is mentioned in the said document (Ex.A3) that the rent agreement is in respect to a vacant plot situated at Hanuman Gate, Jagadhri. In the statement of the petitioner recorded in the proceedings, it is clearly mentioned that no arrears of rent remained due from the tenant as on 05.03.1998. Therefore, this ground indeed does not survive to the petitioner.

Learned appellate Authority has correctly observed that in

respect to the payment of house tax, no notice for the payment of the same was ever served upon the tenant after execution of the rent note. Moreover, there was no evidence on record to indicate that house tax was ever levied by the Municipal authorities, Jagadhri. Contention of learned counsel for the petitioner that relevant documents furnished before the learned appellate Authority were not considered is clearly untenable, hence rejected. The said documents were admittedly never produced before the learned Rent Controller neither was any application for additional evidence moved before the learned appellate authority. In the present petition, the petitioner seeks to produce documents i.e. house tax assessment register for the year 1999-2000, house tax notice for the years 2001-02 and 2002-03, house tax payment receipts dated 10.04.2002 and 18.06.2003 deposited by the petitioner with the Municipal Council, Jagadhri by way of additional evidence. There is not a whisper or even a semblance of an explanation in the said application as to why these documents could not be brought on record of the learned Rent Controller or the averment that the petitioner despite due diligence could not produce the same. Moreover, this petition under Section 13 of the Act was filed on 24.12.1995. Assessment register sought to be produced is for the year 1999-2000. Notice is for the period of 2001-02, 2002-03 and receipts are also of the year 2002-03. All the said documents are subsequent to the institution of the application. No ground is made out for allowing this application at this stage and no reliance can be placed on the said documents.

As far as subletting of tenanted premises is concerned, evidence on record reveals that there is no parting of possession of tenanted premises in favour of respondent No. 2. Respondent No. 2 is the son of Amarjit Singh

who is the Proprietor of the tenant – Firm. Both father and son are admittedly living jointly having a common mess. Therefore, it is rightly held by both the learned courts below that the petitioner failed to prove that respondent No. 2 is having exclusive control over the business being run in the tenanted premises. Both the learned courts have rendered concurrent findings of fact on a correct appreciation of the evidence on record.

It is relevant to note that the Hon'ble Supreme Court in **Hindustan Petroleum Corporation Limited versus Dilbahar Singh (2014) 9 SCC 378** while examining the scope of revisional jurisdiction, reiterated that the said power is indeed a limited one. Pure findings of fact, until and unless perverse and opposed to the evidence on record should not be interfered with. It is specifically observed that:

“ The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/Authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to

reappreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal.”

Learned counsel for the petitioner is unable to point out any illegality, infirmity or error of law in judgment dated 02.06.2003 passed by the learned Rent Controller, Jagadhri as well as judgment dated 01.04.2004 passed by the learned appellate Authority, Jagadhri, which call for any interference in exercise of revisional jurisdiction by this Court.

No other argument has been raised.

Present petition is, accordingly, dismissed with no order as to cost.

February 14, 2019
rts

(Lisa Gill)
Judge

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