

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

CR No. 2840 of 2018 (O&M)
Date of decision: 18.9.2019

Ritu Mittal and others

...Petitioners

Versus

Kailash Chand Bansal

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Sumit Sangwan, Advocate,
for the petitioners.

Mr. Akshay Kumar Goel, Advocate,
for the respondent.

JAISHREE THAKUR, J.

1. This instant revision petition has been filed under Article 227 of the Constitution of India with a prayer for setting aside the order dated 9.3.2018 passed by the Rent Controller, Bhiwani, whereby the application (Annexure P/2) filed by the respondent/tenant for dismissing the ejectment petition filed by the petitioners has been allowed.

2. In brief, the facts are that the petitioners No. 1 and 2 herein filed an ejectment petition under the Haryana Urban (Control of Rent & Eviction) Act, 1973 on the ground that the respondent herein is in arrears of rent. During the pendency of the ejectment proceedings, an application was filed by the respondent/tenant stating that during the pendency of the proceedings, one Sanjay Mittal, who is none other than the husband of petitioner No.1, has purchased the shop in dispute from the original

petitioners and had moved application for being impleaded as party, which was allowed and he was impleaded as petitioner No.3. Therefore, it was contended that since Sanjay Mittal—petitioner No.3, has secured the ownership of the shop in dispute and he stands substituted in place of the original petitioners No.1 and 2, they have lost their right in the property and as such they have no locus standi to keep the ejectment petition alive on the ground of non-payment of rent and the same deserves to be dismissed. As already noticed, the application was allowed and consequently the petition too was dismissed. Aggrieved against the said order, the instant revision petition has been filed.

3. Learned counsel for the petitioners submits that the application filed by the respondent was allowed on the ground that the original petitioners ceased to have any right in the property in dispute and petitioner No.3 could not claim arrears of rent prior to him becoming the owner. It is further contended that while allowing the application for dismissal of the ejectment petition, there is no finding on merit and the Rent Controller had taken a very hyper technical approach. The ejectment petition stands decided without returning any finding on merit of the dispute. It is contended that the rights between the parties have to be determined keeping in view the position at the time of filing of the petition and not on the basis of any subsequent events.

4. Per contra, learned counsel appearing on behalf of the respondent raises a preliminary objection that the impugned order passed by the Rent Controller is appealable and, therefore, the revision petition as such would not be maintainable. In support of his contention, he relies on a

judgment rendered by a Division Bench in **Tirlok Singh Anand Versus M/s Prem Chand and Sons and others 2012 (4) RCR (Civil) 118**, whereas learned counsel for the petitioners herein contends that the order of the Rent Controller is not appealable as it does not finally determine the controversy between a tenant and a landlord and only such orders would be appealable. In support of his contentions, he relies upon a judgment rendered by a Full Bench of this Court in **M/s Daya Chand Hardayal Singh Commission Agents Versus Bir Chand 1983 (2) R.C.R. (Rent) 38**.

5. I have heard learned counsel for the parties and have perused the pleadings of the case as well as the impugned order.

6. There is no dispute about the fact that initially the ejectment petition had been preferred by Ritu Mittal and Bhagwati Mittal—petitioners No. 1 and 2 on the ground of non-payment of rent. Subsequent to the filing of the ejectment petition, Sanjay Mittal, purportedly purchased the shop in dispute from his wife—Ritu Mittal and wife of his brother—Bhagwati Mittal and thereafter an application was filed for dismissal of the ejectment petition on the ground that the petitioner—Sanjay Mittal has no locus standi, which application was allowed by the Rent Controller holding that the petitioners have no locus standi to keep the petition alive, since the original petitioners have no right or interest left in the property and the subsequent purchaser cannot claim arrears of rent prior to his becoming owner. The Rent Controller allowed the application of the respondent and dismissed the ejectment petition. In **Tirlok Singh Anand's case (supra)**, the following issues were referred to a Division Bench:-

“(a) If the notification dated 14.04.1947 is still holding the

field by which only an order passed under Sections 4, 10, 12 & 13 is made appealable, then whether all orders passed by the Rent Controller have become appealable in terms of the notification No.4137/2-CII-76/17354 dated 29.04.1976 issued by the Government of Punjab?

*(b) Whether the observation of the Supreme Court in para No.25 of the **Harjit Singh Uppal Vs. Anup Bansal** (Supra) i.e. (2011) 11 SCC 672, while referring to Section 15(1) (b) of the East Punjab Urban Rent Restriction Act, 1949 only, is an observation in context of the facts of that case as there was no issue of maintainability of appeal or revision arising out of interlocutory orders before it and there is no reference to Section 15(5) of the Act or Section 15(6) of the Haryana Urban (Control of Rent and ejection) Act, 1973?*

(c) Whether the orders passed by the Rent Controller during the proceedings exercising its inherent powers like in the case of amendment of pleadings, impleadment of parties, setting aside of ex parte proceedings, restoration of petition etc. etc... are revisable under Section 15(5) of the East Punjab Urban Rent Restriction Act, 1949?

7. The Division Bench, while referring to several judgments, including the Full Bench in **M/s Daya Chand Hardayal Singh Commission Agent's case (supra)**, as relied by the learned counsel for the petitioners, held as under:-

“Therefore, we answer the questions framed by holding that in terms of the notification dated 14.04.1947, orders passed by the Rent Controller under Sections 4, 10, 12 & 13 alone are appealable in both the States of Punjab and Haryana and that all other orders passed by the Rent Controller are not subject matter of appeal. Orders other than the orders which are appealable, can be disputed only by way of a revision petition

before this Court.”

8. The question that arises for determination in this revision is, whether the impugned order passed by the Rent Controller is an order within the ambit of Section 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1973 and the answer would be in the affirmative since the ejectment petition itself stands dismissed after allowing the application filed by the respondent/tenant and the file was consigned to record.

9. The argument, as raised by the learned counsel for the petitioners, is that it is decision on the application of the respondent/tenant for rendering the ejectment petition as infructuous, and therefore, it cannot be held that this is a decision on the ejectment petition filed under Section 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1973. This contention does not appeal to this Court, in view of the Division Bench judgment of this Court in the case of **Tirlok Singh Anand (supra)**. Without advertng to the merit of the case whether the application has rightly or wrongly been allowed, the admitted position is that based on the application, the ejectment petition itself stands dismissed, which would indicate that it was a decision on the ejectment petition under Section 13 of the Act. Therefore, applying the ratio of the Division Bench judgment in **Tirlok Singh Anand's case (supra)**, wherein it has been held that any order passed under Section 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1973 would be appealable, the petitioner is relegated to avail the remedy in accordance with law.

10. At this stage, learned counsel for the petitioners submits that in

case an appeal is filed before the Appellate Authority against the impugned order, the delay would come in their way. In this view of the matter, it is made clear that in case an appeal is filed along with an application for condonation of delay under Section 14 of the Limitation Act, the same shall be considered keeping in mind that the petitioners herein had approached this Court within the specified time.

11. The revision stands disposed of on the above terms.

18.9.2019
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No