

CR No. 4967 of 2004 (O&M)

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

CR No. 4967 of 2004 (O&M)

Date of Decision: July 23, 2019

Jamil

..... Petitioner(s)

Versus

Ram Saran and another

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. S.K. Bawa, Advocate
for the petitioner.

Mr. Amit Jain, Advocate
for respondent no.1.

LISA GILL, J.

The petitioner-tenant is aggrieved of judgment dated 21.08.2003, passed by the learned Rent Controller, Ferozepur Jhirka as well as the judgment dated 17.09.2004, passed by the learned Appellate Authority, Gurugram. Ejectment of the petitioner has been ordered by learned Rent Controller on a petition filed under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973, by the landlord - Ram Saran (respondent no.1 in this case). The said decision dated 21.08.2003 has been upheld by the learned Appellate Authority, Gurugram.

Respondent no.1 - landlord filed the petition for ejectment on the ground that the premises in question had been sublet by the respondent Yasin to the present petitioner. It is pleaded that the shop in question was let out by the respondent - Yasin to the present petitioner at the rate of

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Rs.75/- per month from 28.09.1974 to 27.08.1975, for a period of 11 months and rent note dated 28.09.1974 Ex.PW1/E was executed. Ejectment of the petitioner was sought on the ground of subletting, non payment of rent and personal bonafide necessity. Respondent - Yasin did not appear before the learned Rent Controller despite service and he was proceeded against ex-parte.

Present petitioner resisted the petition and stated in the written statement that the shop in question had been taken on rent by the petitioner Jamil himself. It is denied that the shop in question was ever let out to Yasin in the year 1974. Petitioner claimed to be in peaceful possession of the suit property since more than 15 years on payment of rent @ Rs.200/- per month. Dismissal of the petition was prayed for. Replication was not filed.

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

- i) Whether the parties are landlord and tenant respectively, in the demise premises, if so its effect ?OPP.
- ii) Whether the respondent is liable to be ejected from the demised premises, if so its effect ?OPP
- iii) Whether the petition is not maintainable in the present form ? OPR
- iv) Whether the petitioner has no cause of action ? OPR
- v) Whether the petitioner has no locus standi to file and maintain the present petition? OPR
- vi) Relief.

Evidence was led by both the parties in support of their respective claims/stands.

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Learned Rent Controller on considering the evidence on record, facts and circumstances of the case concluded that the landlord successfully proved subletting of the premises. Ejectment of the present petitioner was ordered on the ground of subletting of the premises and non-payment of rent. The other grounds were not deliberated being not pressed.

Appeal preferred by the present petitioner was dismissed by the learned Appellate Authority, Gurgaon vide impugned judgment dated 17.09.2004. Aggrieved therefrom, present petition has been filed.

The record of this case had been burnt in the fire incident, which took place on the premises of this Court in 2011. Copy of the pleadings as well as the statements of the witnesses furnished in Court today by learned counsel, are taken on record, subject to just exceptions.

Learned counsel for the petitioner vehemently argues that the evidence on record reveals that rent note in favour of Yasin was only for a period of eleven months from 28.09.1974 to 27.08.1975. It was never renewed thereafter. It is contended that the rent note, Ex.PW1/A was not proved in accordance with law. The landlord while deposing as PW4 has admitted in his cross-examination that the premises in question were not let out on rent by Yasin to the present petitioner. It is submitted that RW2 Lallu, who was a tenant in the adjoining shop stated that the premises, in question, were earlier let out to one Hazi Laddam. Tenancy of the petitioner directly under the respondent-landlord, is proved by the fact that the electricity meter installed on the premises, is in the name of the present petitioner. Moreover, there is no explanation as to why the respondent-

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landlord did not take any action till 1993, though it was in his knowledge that the electricity meter was in the petitioner's name since 1991. It is further submitted that the respondent-landlord has taken contradictory grounds for ejectment of the petitioner. No evidence has been led to prove personal necessity or non-payment of rent. It is contended that sub-letting of the premises is not proved on the basis of evidence on record. It is thus prayed that the present petition be allowed and petition filed by respondent no.1 be dismissed throughout.

Learned counsel for respondent No.1-landlord, per contra, submits that the petitioner has failed to prove that he was a tenant under respondent No.1. Plea raised by the petitioner that the rent note, in question, pertains to a different shop, has been rightly rejected inasmuch as there is not even any pleading to this effect. Moreover, installation of the electricity meter cannot prove tenancy of the petitioner under the respondent, in the absence of any positive evidence in this respect. Reference is made to the statement of RW3 Shankar Lal, an employee of HVPN. Dismissal of the petition is prayed for.

I have heard learned counsel for the appellants and I have gone through the file as well as the copy of the pleadings and evidence produced in Court today.

In my considered opinion, the respondent-landlord has successfully proved execution of the rent note Ex.PW1/A, which reflects that the premises in question were let out to respondent no.1–Yasin for a period of 11 months @ Rs.75/- per month. PW-1 Niranjana Lal, the scribe of this

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note, has duly proved its execution. PW-2 is the son of one of the witnesses of this rent note namely Roshan Lal who admittedly passed away. The other witness of the rent note namely Dhani Ram had also passed away. Respondent-landlord testified as PW-4 and clearly deposed in respect to the facts of the case as pleaded. PW-4 specifically stated that the shop in question was let out to respondent Yasin who further sublet the shop to the present petitioner without his consent. Anil Kumar, Draftsman (PW-3) proved the site plan Ex. P-1. Therefore, I do not find any merit in the argument raised by learned Counsel for the petitioner that the rent note Ex.PW1/A is not proved in accordance with law. It is relevant to note that the petitioner-tenant in his written statement has set up a specific case of the shop in question being directly rented out to him by the landlord. However, it is a matter of record that the petitioner has miserably failed to prove the letting out of the demised premises by the respondent-landlord to him, 15 years prior thereto. Admittedly, no rent note has been proved by the petitioner neither has any receipt of rent been proved. The evidence on record does not indicate any oral tenancy, as is sought to be urged by learned counsel for the petitioner. Furthermore, both the learned Courts below have rightly observed that the petitioner has led evidence, which is contrary to his pleadings. Even during arguments addressed before this Court, it is contended that the identity of the property in question is not proved in as-much-as the rent note Ex.PW1/A was not executed in regard to the shop in question. It is a matter of record that identity of the shop in question was never questioned by the petitioner in the written statement. A

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perusal of the written statement reveals that the petitioner has taken a categorical stand that the premises in question were let out to him directly by the landlord and not by Yasin. Both the learned Courts below have dealt with the said question in great detail with reference to the evidence on record. Findings returned are in consonance with the evidence on record.

Another argument raised by the learned counsel for the petitioner is that the electric connection installed on the premises is in the name of the petitioner. This fact, it is urged, reflects that the premises in question were let out to the petitioner directly. This argument is also devoid of any merit as a perusal of the statement of RW-3 Sohan Lal, an official of HVPN reveals the hollowness of the petitioner's claim. In the cross-examination RW-3 stated that the file did not reveal the capacity in which the electric connection was released to the petitioner i.e. the status of the petitioner is not mentioned. RW-3 further admitted that before release of an electric connection, the Board usually demands proof of ownership and the site plan of the premises where the connection is to be released. However, in the present case, it is stated by RW-3 that there is no proof of the site on which the connection was released and neither is any site plan available on the file. Release of the electric connection without any endorsement etc. by the owner accepting the petitioner to be the tenant, besides there being no evidence on the file to show release of the connection on the demised premises itself, cannot in any manner prove creation of a direct tenancy by the landlord in favour of the petitioner.

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Similarly, reliance by the petitioner on the testimony of RW-2 Lalu i.e. the tenant in an adjoining shop is of no avail to him. Learned Rent Controller has rightly raised a question mark on the credibility of RW-2. Statement of RW-2 is in clear contradiction to the statement of RW-4 Jamil. RW-2 Lalu has stated that the petitioner was inducted as a tenant about 17 – 18 years ago whereas RW-4 deposed that he has continued as a tenant of the demised premises for the last 25 years. Statement of RW-4 is even contradictory to his pleadings where he has taken a stand of being a tenant since 15 years.

Keeping in view of the facts and circumstances of the case, both the learned Courts below have rightly concluded that respondent no.1- landlord successfully proved the subletting of the premises to the present petitioner. Ejectment of the petitioner has been rightly ordered.

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 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

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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.”

Both the learned courts below have rendered concurrent findings of fact against the petitioner on a wholesome and proper appreciation of evidence on record which warrants no interference in exercise of revisional jurisdiction.

No other argument has been raised.

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Learned counsel for the petitioner is unable to point out any illegality, infirmity or perversity in impugned judgment dated 21.08.2003, passed by the learned Rent Controller, Ferozepur Jhirka as well as the judgment dated 17.09.2004, passed by the learned Appellate Authority, Gurgaon respectively, which calls for interference by this Court in this civil revision petition.

Accordingly, this civil revision petition is dismissed with no order as to costs.

July 23, 2019.

Sunil

**(LISA GILL)
JUDGE**

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