

CR No.3661 of 2017 (O&M)

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

CR No.3661 of 2017 (O&M)

Date of decision: 28.08.2019

Raman Kumar

.....Petitioner

versus

Narinder Pal Sharma

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Sukhbir Singh, Advocate, for the petitioner.
Mr. Veneet Sharma, Advocate, for the respondent.

RAMENDRA JAIN, J. (ORAL)

Tenant – Raman Kumar through this revision has laid challenge to judgment of the Appellate Authority dated 02.02.2017, affirming order of the learned Rent Controller dated 08.04.2015, whereby learned Rent Controller accepting petition under section 13 of the East Punjab Rent Restriction Act, 1949 (in short the 'Act') of the respondent-landlord directed the revisionist to vacate the demised house within two months.

Briefly, respondent claiming himself to be owner in possession of the demised house filed eviction petition under Section 13 of the Act against petitioner, which after tooth and nail contest by the petitioner and affording full opportunities to both the sides, was accepted by learned Rent Controller vide order dated 08.04.2015.

Being aggrieved, petitioner-tenant approached the Appellate Authority, but his appeal was dismissed vide judgment dated 02.02.2017.

Learned counsel for the petitioner *inter alia* contends that both

the authorities below failed to appreciate that respondent had filed eviction

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petition claiming his ownership and title over property bearing unit No.1199-A/12, whereas house under tenancy bears No.2642-A/12. Therefore, respondent could not establish identity of the demised house and his ownership over the same, which he allegedly claimed under the tenancy of the petitioner. Even otherwise, petitioner was tenant under the Custodian Department and since 1954 he did not pay even a single penny towards rent to the Custodian Department. Thus, he was occupying the house under his possession as unauthorised occupant. Both the authorities below failed to appreciate that taking into account the status of the petitioner as unauthorised occupant over the house in his possession, he could not have been evicted in an eviction petition filed by the respondent under the Act. Earlier petition of the respondent for eviction was dismissed. Therefore, subsequent petition, which has now been accepted vide impugned orders, ought to have been dismissed in view of doctrine of *res judicata*.

On the other hand, learned counsel for the respondent refuting above submissions pleaded legality and validity of the impugned judgment of the Appellate Authority and order of the learned Rent Controller.

Having given thoughtful consideration to the rival submissions, this Court finds the instant revision completely devoid of any merit for the reasons to follow.

No question of law much less substantial has been raised in this revision. Therefore, this revision is held not maintainable.

This Court while exercising its revisional powers has very limited jurisdiction, which can only be exercised, (i) when the Courts below have acted beyond jurisdiction vested in them or (ii) have not exercised the same diligently and (iii) have exercised illegally.

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Learned counsel for the petitioner has not been able to show any such infirmities in the judgment of the Appellate Authority and order of the Rent Controller.

Perusal of cross-examination of the petitioner shows that demised house, which is under his possession as tenant, bears property unit No.1199-A/12 apart from several other numbers.

It is needless to mention here that periodical surveys of the properties are done by the municipal authorities after a couple of years or every year or sometimes after 3/4 years. After every survey, property unit is changed in the municipal record. Therefore, from the cross-examination of the petitioner, it is apparent that demised house under his tenancy owned by respondent-landlord bears several numbers. Petitioner in his cross-examination has specifically admitted ownership of the respondent-landlord, testifying that Gian Chand is father's name of the respondent. Respondent is residing on the first floor, whereas he is residing on the ground floor as tenant. Thus, it is apparent on the record that no ambiguity remained about the identity of the demised house. It is well-settled proposition of law that admission is the best proof.

Doctrine of *res judicata* is not applicable in this case inasmuch as earlier eviction petition was filed by the respondent against the petitioner on some different cause of action altogether different from the one claimed in the instant eviction petition.

In view of discussion above, revision is dismissed with direction to the petitioner to vacate the demised house within 15 days from today inasmuch as two months' time granted to him by the learned Rent Controller on 08.04.2015 has already expired long time ago. In case,

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petitioner does not handover vacant possession of the demised house to the respondent-landlord, in that eventuality he shall be liable to pay mesne profits @ Rs.15,000/- per month after expiry of 15 days.

(Ramendra Jain)
Judge

August 28, 2019

R.S.

Whether speaking/reasoned Yes/No

Whether reportable Yes/No