IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: March 06, 2019

1. CR No.558 of 2017 (O&M)

Hans Raj

...Petitioner

Versus

HMT Limited & another

...Respondents

2. CR No.530 of 2017 (O&M)

Bhupinder Kaur

...Petitioner

Versus

HMT Limited & another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vishal Sodhi, Advocate,
for the petitioners in both the cases.

Mr. Shikhar Sarin, Advocate,
for the respondent in both the cases.

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AMIT RAWAL, J.

This order of mine shall dispose of two Civil Revision Petitions bearing No.558 and 530 of 2017 as the common question of fact and law is involved. The facts are being taken from CR No.558 of 2017.

Petitioner alleged that as per the allotment letter, he was allotted a house on lease/licence by HMT-respondent No.1 (hereinafter called as "HMT") on the basis of the policy dated 27.11.2000, which provided the rent of the premises as ₹1057/- per month. HMT initiated the proceedings under the Punjab Premises (Eviction of Unauthorized

Occupants) Act, 1971 (for short, 1971 Act) on the premise that the petitioner, who was arrayed as respondent in the petition, had retired, but did not vacate the quarter allotted to him as licence was never renewed and had expired by efflux of time.

The aforementioned petition was contested by the petitioner by raising numerous preliminary objections. On the basis of the aforementioned pleadings, Estate Officer framed the following issues:-

"*1) Whether the quarter is public premises? OPP*

2) Whether the defendant is un-authorised occupant of the public premises? OPP

*3) Whether the petition is not maintainable? OPD *

4) Whether the petitioner has no locus-standi? OPD

5) Whether the defendant owes to the petitioner company licence fee and other charges and quantum of recovery thereof? OPD

6) Whether the defendants are entitled to counter claim as claimed in the written statement? OPD

7) Relief."

Both the parties led evidence and the petitioner was ordered to be evicted vide order dated 28.12.2016 and HMT was held entitled to recover damages along with interest from the date of filing of the petition till its actual possession. Petitioner assailed the aforementioned order by filing an appeal before the District Judge, which was entrusted to the Additional District Judge, Panchkula and taken up on 12.01.2017, whereby status-quo order with regard to the possession over the suit property was ordered to be maintained.

Mr. Vishal Sodhi, learned counsel representing the petitioner in both the petitions submitted that vide impugned order Annexure P-2, the Additional District Judge, on receipt of the two applications, one for modification and another for preponment of the hearing by taking into consideration the ratio decidendi culled out in **M/s Atma Ram Properties ltd. Versus Federal Motors Pvt. Ltd., 2005(1) SCC 705** stayed the eviction order subject to deposit of 50% of the damages/mesne profits within 15 days from 11.01.2017. The aforementioned order is not sustainable in the eyes of law and in support relied upon the statement of the witness to belie the calculations Ex.P9 and Ex.P10, whereby the department, had, claimed the mesne profits. In other words, it was submitted that the witness admitted that the HMT did not take any decision with regard to the mesne profits nor any cancellation order was passed. Many other similarly situated persons had also approached the District judge, but the eviction order was stayed without imposing any condition of deposit of 50% which fact is evident from Annexures P-3 to Annexure P-10.

An application for modification of the order was submitted, but vide impugned order, it was dismissed. As per the findings in **M/s Atma Ram Properties (P) Ltd.'s case (supra),** status of a tenant is equal to that of licensee and has a statutory right of appeal, but vis-a-vis the grant of interim order qua eviction, it is to be dealt in exercise of equitable jurisdiction. Appellate Authority has no jurisdiction to put the tenant on unreasonable terms. As per the provisions of Order 41 Rule 5 CPC, the condition should be on reasonable terms. The Estate Officer did not have any power to fix or enhance the rent of any public premises. In support of the aforementioned submissions, relied upon the judgment rendered by Hon'ble the Supreme Court in **Banatwala and Company Vs. LIC of India and another, 2011 (13) SCC 446=2011(4) R.C.R. (Civil) 627.**

Per contra, Mr. Shikhar Sarin, learned counsel representing the respondents opposed the prayer of the learned counsel for the petitioners and submitted that the orders under challenge are perfectly legal and justified and do not call for any interference. He submitted that in **State of Maharashtra and another Versus Super Max International Private Limited and others,** **(2009) 9 Supreme Court Cases 772,** while considering the various judgments including **M/s Atma Ram,** Hon'ble the Supreme Court noticed that it is always upon the Court while admitting the appeal or revision, to grant the stay subject to some reasonable conditions. Equally so, the Court has to exercise the restraint and would not fix any excessive amount. Deposit of 50% is most innocuous and, thus, prayed for dismissal of the revision petitions.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel for the petitioners.

If at all the petitioners were aggrieved of the exercise of jurisdiction, by the Estate Officer as to the status of a licensee or tenant, should have pressed the issue qua the same at an appropriate stage. Para 15 of the judgment of **M/s Atma Ram** was read out, by Mr. Sodhi, to maintain that the tenancy would stand terminated with effect from the date of the decree passed by the lower forum and in case of the premises governed by the rent control legislation, the decree of eviction on being affirmed, would be determinative of the date of termination of tenancy and the decree of affirmation passed by the superior forum at any subsequent stage. An effort was made that even if the Court had jurisdiction to impose the condition, but the order of the Estate Officer fixing the mesne profits from the date of the application was excessive as it should have been at least from the date of the eviction.

I am not in agreement with the aforementioned argument, for, this is an appeal preferred under the provisions of 1971 Act. Section 9 empowers the District Judge to deal with such appeal. Sub-section (3) of Section 9 empowers it to stay the enforcement of the order on such condition as it deem fit. The imposition of condition has, thus, not taken away by implication, but statutorily enables the Judge. In **State of Maharashtra's case (supra),** a question with regard to the interim order granted by the Appellate Authority under the Rent Act governing the provisions of Rent Act arose as to whether the imposition of condition of deposit of ₹5,40,000/- was a package or unreasonable or unjustified. While dealing with the aforementioned condition, the ratio decidendi culled out in **M/s Atma Ram's case** was also noticed. In Para 77, it was held as under:-

> "*In the light of the discussions made above we hold that in an appeal or revision preferred by a tenant against an order or decree of an eviction passed under the Rent Act it is open to the appellate or the Revisional court to stay the execution of the order or the decree on terms, including a direction to pay monthly rent at a rate higher than the contractual rent. Needless to say that in fixing the amount subject to payment of which the execution of the order/decree is stayed, the court would exercise restraint and would not fix any excessive, fanciful or punitive amount.*"

The imposition of condition of deposit of 50%, in my considered view, cannot be said to be fanciful or excessive, but an innocuous condition on the petitioner to protect the premises during the pendency of the statutory appeal. Rather, they should lay focus on the decision within some time line to avoid the incurring of the mesne profits.

As far as the contention of Mr. Sodhi with regard to the discrimination of having not imposed the condition on similarly situated persons, the present revision or argument is bereft of any reasons as the orders Annexures P-3 to Annexure P-10 are only the interim orders showing registering of appeals and not the discrimination. Even in the instant case also, as per order dated 11.01.2017, there was a blanket stay and the same was modified. No explanation has come forth as to whether at any subsequent stage, the interim orders, referred to above, remained the same or modified.

As an upshot of my aforementioned observations, the impugned orders do not suffer from any illegality or perversity. No ground for interference is made out. Resultantly, the revision petitions are dismissed.

March 06, 2019 **(AMIT RAWAL)**
ramesh **JUDGE**

Whether speaking/reasoned Yes/No
Whether Reportable: Yes/No