

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.656 of 2016 (O&M)
Date of Decision: 05.02.2019.

Krishan Lal

.....Petitioner

Versus

Telu Ram

..... Respondent

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Rakesh Chopra, Advocate
 for the petitioner.

 Mr. Vijay Sharma, Advocate
 for the respondent.

LISA GILL, J(Oral).

Petitioner is aggrieved of order dated 03.12.2015 (Annexure P-) passed by the learned Additional Civil Judge (Sr. Division), Nabha, whereby application under Order 6 Rule 17 and Order 1 Rule 10 read with Section 151 CPC, for impleading Lal Chand son of Telu Ram, has been dismissed.

Brief facts necessary for the adjudication of the case are that respondent-Telu Ram, filed a petition under Section 13(4) of East Punjab Urban Rent Restriction Act, 1949 (for short 'Act') for ejectment of the present petitioner from the demised premises i.e. the shop in question. Telu Ram is claimed to be owner of the said shop. Petition filed by Telu Ram was allowed by the learned Rent Controller on 30.01.2004. Appeal filed by the present petitioner was dismissed by the learned Appellate Authority, Patiala on 08.08.2005. Civil Revision No. 4699 of 2005 preferred by the petitioner challenging his eviction was dismissed by this Court on 11.08.2006. Special

Leave Petition filed by the petitioner against the said decision was dismissed by the Hon'ble Supreme Court on 27.08.2007.

Petitioner-Krishan Lal, in execution proceedings handed over possession of the demised shop to the landlord on 07.09.2007. After about three and half years, the present petitioner filed an application under Section 13(4) of the Act seeking restoration of possession along with an application for appointment of local commissioner on the ground that the landlord did not start the business of clothing i.e. the ground on which eviction of the petitioner was ordered, but sold the shop to one Bihari Lal.

Reply to the application was filed by the respondent-landlord while pleading that after taking possession of the premises, renovations and repairs were carried out by the landlord and the business of clothing under the name and style of M/s Telu Ram Silk Store was started. The Mahurat took place on 30.11.2007. Business was run by the respondent for about three years from the demised premises, but due to old age, weak eyesight etc., the same was closed thereafter. Issues in the matter were framed on 04.06.2012.

The shop in question was gifted by Telu Ram to his son Lal Chand by a gift deed dated 29.05.2009. Application for impleading Lal Chand and necessary amendment in the petition was moved by the present petitioner while stating that the petitioner was not aware of the property being gifted to Lal Chand son of Telu Ram, till one of the witnesses i.e., Gaurav son of Lal Chand produces a notarized copy of the gift deed before the learned Additional Civil Judge (Sr. Division), Nabha on 15.07.2015. It was pleaded that Lal Chand was thus a necessary party.

Learned Rent Controller, Nabha vide impugned order dated 03.12.2015, dismissed the application while holding that Lal Chand son of

Telu Ram is not a necessary party to the main petition.

Aggrieved therefrom, present petition has been filed.

Learned counsel for the petitioner submits that the factum of the property being gifted to Lal Chand was not in his knowledge. It is only when this fact came to light on 15.07.2015 that the application seeking necessary amendment and impleadment of Lal Chand was immediately moved on 16.11.2015 (Annexure P-2). Moreover, amendment sought does not in any manner prejudice the respondent. Lal Chand son of Telu Ram is necessary for just and proper adjudication of the controversy in hand as he is admittedly the owner in possession of the property in question. Learned counsel for the petitioner submits that the amendment in petition is merely clarificatory of the fact of transfer of the shop to Lal Chand. The petitioner, it is submitted merely seeks to add para 5-A to the existing petition which reads as under:-

“5-A. That the respondent no.1 had transferred the shop in question and delivered the possession on 29.05.2009 to respondent no.2. The respondent no.2 did not start any business in the shop in dispute and the same is lying locked.”

It is thus prayed that this petition be allowed.

Learned counsel for the respondent refutes the arguments as above and submits that the petitioner's sole object is to harass the respondent who is over 70 years of age. Possession of the shop in question was handed over during execution proceedings on 07.09.2007. After necessary repairs being carried out in the shop, cloth business under the name and style of M/s Telu Ram Silk Store was carried out. It is due to failing health, eyesight and old age that business was ultimately closed. The petitioner, it is submitted has admitted of having two shops right in front of the demised premises.

Mala fide intentions on the part of the petitioner of simply causing

harassment to the respondent is apparent. Lal Chand is not a necessary party in the absence of whom the petition cannot be decided completely and effectively. Petitioner has already examined witnesses in support of his case. Moreover, it is proved on record that the premises in question were used by the landlord for over three years by running the cloth shop. Therefore, provisions of Section 13(4) of the Act are not attracted. Moreover, the petitioner is taking contradictory pleas of the respondent having sold the shop on one hand and now claiming that the shop has been transferred by way of a gift deed. Such a contradictory stand should not be permitted. It is thus prayed that the present revision petition be dismissed.

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

Eviction of the petitioner from the demised premises under orders of the Court is a matter of record. It is also not denied that possession of the premises was handed over by the petitioner to the landlord on 07.09.2007 during execution proceedings. The shop in question has been gifted by Telu Ram to his own son after a period of 12 months. The question whether cloth business was run under the name and style of M/s Telu Ram Silk Store by the respondent-landlord pursuant to taking over the possession of the premises is a matter which is subjudice before the learned Rent Controller. It is not denied that in the reply filed to the petition under Section 13(4) of the Act, it is not mentioned by the respondent that the property in question stood gifted to the respondent's son Lal Chand. The said gift deed was produced by Gaurav Goyal son of Lal Chand before the learned Rent Controller on 15.07.2015. Lal Chand is claimed to be the owner in possession of the demised premises by the respondent-Telu Ram. It cannot be said that he is not a necessary party or proper party. Indeed, impleadment

of Lal Chand shall prevent multiplicity of litigation. It has been observed by the Hon'ble Supreme Court in **Abdul Rehman and another Vs. Mohd. Ruldu and others 2012(4) R.C.R (Civil) 481** that the main purpose of allowing an amendment is to minimise litigation as long as the amendment subserves the ultimate cause of justice and avoid further litigation, the same should be allowed.

Lal Chand is admitted by the respondent-Telu Ram to be the owner in possession of the shop on the basis of gift deed dated 29.05.2009. The question whether petition under Section 13(4) of the Act filed by the petitioner is a mere tool or instrument to harass the respondent or that he was asking for some illegal consideration as argued and whether the respondent did indeed carry out cloth business in the demised premises after getting the vacant possession of the shop, are questions to be decided by the learned Rent Controller. An adjudication on the merits of the case, in the present proceedings is not called for and neither is any opinion thereon being expressed. At the same time, it is evident that impleadment of Lal Chand in whose favour property in question has been transferred by the respondent is indeed a proper party, necessary for the just adjudication of the case.

Keeping in view the facts and circumstances of the case, this petition is allowed. Impugned order dated 03.12.2015 passed by the learned Additional Civil Judge (Sr. Division), Nabha, is set aside. Consequently, application under Order 6 Rule 17 and 1 Rule 10 read with Section 151 CPC for impleading Lal Chand son of Telu Ram as party to the petition and incorporation of para no.5-A as mentioned in para no.7 of the application, is allowed. Needless to say, the respondent is at liberty to take up all the pleas available to him before the learned Rent Controller. It is clarified that there is no expression of opinion on the merits of the controversy which shall be

adjudicated upon by the learned trial Court in accordance with the provisions of law.

05.02.2019
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.