

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

Civil Revision No. 6848 of 2017 (O&M)

Date of decision : January 08, 2019

R.P. Mehra

.....Petitioner

Versus

Dheeraj Dembla and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Johan Kumar, Advocate
for the petitioner.

Mr. Sudhanshu Makkar, Advocate
for respondent No. 1.

LISA GILL, J.

This petition has been filed challenging judgment dated 29.01.2016 passed by the learned Civil Judge (Junior Division), Palwal as well as judgment dated 16.05.2017 passed by the learned Additional District Judge, Appellate authority, Rent Controller, Palwal.

Brief facts necessary for adjudication of the case are that respondent No. 1 – landlord filed a petition under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 seeking eviction of the petitioner and respondents No. 2 and 3 from the demised premises i.e. a residential house situated in Palwal as detailed in the petition. It is pleaded by the respondent – landlord that the house in dispute was originally owned by one Rattan Lal Diwan. It was purchased by the respondent – landlord vide registered sale deed dated 18.02.2014. Respondent – Syndicate Bank had taken the premises on rent vide agreement dated 01.08.2002. Lease deed was executed between the previous owner Rattan Lal Diwan and

Syndicate Bank Sikri through its Branch Manager R.P. Mehra i.e. the present petitioner. The house was rented out only for a period of eleven months. The present petitioner was transferred from Sikri but he continued to reside in the demised premises and did not vacate the same even after the expiry of lease period. Rattan Lal Diwan passed away. The house in dispute was inherited by his sons Chander Mohan, Jatinder Mohan and daughter-in-law Smt. Asha Rani wife of Inder Mohan in equal shares. The property was sold to respondent – landlord on 18.02.2014. It was pleaded that the tenants were in arrears of rent. Moreover, respondent No. 1 after execution of the sale deed had got married and he required the house in question for his own personal bona fide necessity. Respondent No. 1 claimed to be residing in a small house in Inderpuri, Palwal alongwith his father. Said house was stated to belong to the father of respondent No. 1. It was further pleaded that respondent No. 1 had three sisters. The house in question was not sufficient of the entire family. Legal notice was served upon the tenants but they failed to hand over vacant possession neither was the rent paid.

Written statement was filed on behalf of Syndicate Bank, Regional Office as well as the Branch at Sikri taking a stand that the present petitioner is the tenant in the said premises and they were needlessly impleaded. The present petitioner filed a separate written statement while stating that material particulars as required under the statute were not revealed. Moreover, the landlord was claimed to be a property dealer having various residential as well as commercial building in the area. Bona fide personal necessity of the landlord was disputed while stating that the landlord had no desire to live in the premises in question and purchase of

the property is a speculative venture. It was further pleaded that the present petitioner R.P. Mehra was a tenant on the premises in dispute since 1994 in his personal capacity. Respondent – Syndicate Bank had no concern with the tenancy of the rented premises. Previous owner Rattan Lal was alleged to have orally agreed to sell the house in dispute to R.P. Mehra - petitioner. House tax and electricity charges were, thus, being paid by him. A sum of more than ₹3 lakhs was spent by the petitioner on the said premises. Furthermore, Rattan Lal Diwan had assured the present petitioner that he would compensate him to the extent of about ₹3 lakhs out of the sale price of the house in question. At the same time, it was stated that in case the landlord was successful in proving his ownership qua the premises in dispute, the present petitioner would accept him as the landlord. Dismissal of the petition was prayed for.

Following issues were framed by the learned Rent Controller:-

1. Whether the petitioner is entitled to decree for an order of eviction with regard to the house as prayed for?OPP
2. Whether the suit of the petitioner is not maintainable?OPR
3. Whether the petition is bad for misjoinder of unnecessary parties?OPR
4. Whether the plaintiff has got no locus standi to file the present suit?OPR
5. Whether the petition is estopped by his own act and conduct from filing the present petition?OPR
6. Whether the petitioner has no cause of action to file the present suit?OPR
7. Relief.

Evidence was led by both the parties.

Learned Rent Controller concluded that the lease agreement was infact executed between Rattan Lal Diwan and Syndicate Bank

through its Manager R.P. Mehra. The lease agreement was not executed by R.P. Mehra in his personal capacity. Eviction of the petitioner from the demised premises was ordered on the basis of the personal bona fide necessity of the landlord. Appeal filed by the present petitioner was dismissed by the learned Appellate Authority, Palwal vide judgment dated 16.05.2017.

Aggrieved therefrom, present petition has been filed.

Learned counsel for the petitioner submits that the premises in question were with the petitioner as a tenant since the year 1994. It is further submitted that even if the subsequent lease agreement dated 01.08.2002 was entered into between the previous landlord and Syndicate Bank, it could not effect the status of the present petitioner as a tenant therein. Moreover, there is non-compliance of Section 13(3) of Haryana Urban (Control of Rent and Eviction) Act, 1973. Furthermore, the landlord failed to prove on record his personal bona fide necessity. He has not been given the details of the property of which he is the owner and in possession of. The landlord has admitted that he is in the business of property dealing. It is, thus, prayed that this petition be allowed.

Learned counsel for respondent No. 1 while refuting the above said averments submits that concurrent findings of fact have been returned by both the learned courts below on proper appreciation of evidence on record, which do not call for any interference by this Court.

Heard, learned counsel for the parties and have gone through the file with their able assistance.

Learned counsel for the petitioner has not raised any objection or challenge to the factum of respondent No. 1 being the landlord of the

disputed premises. Ex.PA is the lease agreement dated 01.08.2002. It is apparent that the said agreement has been executed between Rattan Lal Diwan and Syndicate Bank through its Manager R.P. Mehra. Petitioner, R.P. Mehra while deposing as RW1 in his cross examination has confirmed that the agreement was executed by him on behalf of the Syndicate Bank Sikri Branch and he signed Ex.PA in the capacity of Manager of Syndicate Bank, therefore, it is correctly concluded by the learned courts below that the agreement was not executed by the present petitioner in his personal capacity. Thus, even if the petitioner was a tenant prior to the execution of the lease deed (Ex.PA) in his personal capacity it cannot be presumed that the present petitioner had executed Ex.PA in his personal capacity. Merely because Ex.R2 i.e. the rent deed may have been executed by the petitioner on 07.10.1994 for a period of three years, it cannot be held that he continued to be a tenant of the said premises in his personal capacity in perpetuity and that too after execution of Ex.PA on 01.08.2002 on behalf of the Syndicate Bank in his capacity as its Manager. There was indeed no requirement of creating a fresh tenancy on 01.08.2002 if the previous landlord's intention was to continue with the petitioner as a tenant in his personal capacity. The so-called oral agreement to sell the house by Rattan Lal Diwan (the previous landlord) to the present petitioner, which though not even proved on record cannot in any manner vest the petitioner with any right to continue in possession of the house in question.

Argument urged by learned counsel for the petitioner is that requirement of Section 13(3) of the Act has not been complied with. Section 13(a)(i) of the Act reads as under:-

“(3) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession -

(a) in the case of a residential building, if, --

(i) he requires it for his own occupation, is not occupying another residential building in the urban area concerned and has not vacated such building without sufficient cause after the commencement of the 1949 Act in the said urban area;”

Landlord in his petition has pleaded as under:-

“ That after the sale deed, the petitioner got married and the house in question is required by the petitioner for his own personal bonafide need to reside in the same with his wife. It is pertinent to mention here that petitioner is presently residing in a small house situated in Inderpuri Mohalla, Palwal. The said house is owned by his father. There are three sisters of the petitioner. The said house is not sufficient for the entire family of the petitioner. The petitioner wants his separate residence alongwith his wife in the house in question in order to maintain peace and harmony in the family. The petitioner not having any other house in his possession for the above referred purpose in the urban area of Palwal town and has not got vacated any other such house after the commencement of 1949 Act. Thus, the respondents are liable to be evicted from the house in question as provided under Section 13(3)(a)(i) of the Haryana Urban (control of Rent and Eviction), Act, 1973.”

Learned counsel for the petitioner has argued that the landlord in his testimony admitted that he is in the business of property dealing but has not revealed the details of any other property which he may be the owner of. It was further stressed that the statute uses the word 'has not vacated' and does not mention 'has not got vacated', therefore, there is absence of specific pleading to this effect which is sufficient to non-suit the landlord. This argument is clearly fallacious, untenable, hence rejected. Pleading of the respondent – landlord as mentioned in para 10d(ii) of the plaint as reproduced above does not brook such an interpretation. Moreover

landlord appearing as PW2 in his affidavit Ex.PW2/A specifically deposed that he does not have any house in the Municipal area of Palwal which fulfils his requirement and it is further mentioned that since coming into force of the Act in 1949, he had not vacated any such premises. PW2 has revealed in his cross examination that he is living in the house at Inderpuri Mohalla alongwith his parents and wife. He denied that there are six rooms in the house while clarifying that there are only two rooms on the ground floor and one room on the first floor. He further denied that the petition has not been filed on the ground of his personal bonafide necessity but only for having the vacant possession thereof. Learned appellate authority has referred to various judgments of this Court to conclude that even if the landlord failed to plead the ingredients of Section 13(3)(a) but led evidence to that effect, non-pleading of the ingredients would not be fatal to warrant dismissal of application for ejectment. It is relevant to note that the petitioner was very much alive to the issues in question. There is no such evidence on record to indicate that pleadings of the landlord were incorrect or that he was in occupation or the owner of any other property or had vacated such property, which would be a ground for non-suiting the landlord. Personal bona fide necessity of the landlord is duly proved on record. The three sisters of the respondent landlord having been married does not detract from his case as is sought to be urged. Needless to say the married sisters alongwith their respective spouses/families would be coming to visit. Therefore, there is no infirmity in the said finding of the courts below.

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 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.”

Learned counsel for the petitioner is unable to point out any illegality, infirmity or error of law in the impugned judgment dated 29.01.2016 passed by the learned Civil Judge (Junior Division), Palwal as well as judgment dated 16.05.2017 passed by the learned Additional District Judge, Appellate authority, Rent Controller, Palwal, which call for any

interference in exercise of revisional jurisdiction by this Court.

No other argument has been raised.

Present petition is, accordingly, dismissed.

(Lisa Gill)
Judge

January 08, 2019
rts

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