

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

Civil Revision No. 1316 of 2019 (O&M)

Date of decision :October 03, 2019

Nisha Mahajan and others

.....Petitioners

Versus

Punit Mahajan and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Vishal Munjal, Advocate
for the petitioners.

LISA GILL, J.

The petitioners (tenants) being aggrieved of order dated 29.11.2017 passed by the learned Rent Controller, Pathankot have filed this petition challenging their ejectment from the demised premises. The petitioners also challenge judgment dated 08.10.2018 passed by the learned Appellate Authority, Pathankot whereby their appeal against decision dated 29.11.2017 has also been dismissed.

Brief facts necessary for the adjudication of the case are that respondent No. 1/applicant/landlord filed a petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (for short - 'the Act') seeking ejectment of the present petitioners from the demised premises which is a shop as detailed in the petition. One Gurprit Singh Mann was stated to be the original owner of the demised premises, which was rented out to DCM Limited, vide agreement dated 08.10.1969 at the rate of ₹500/- per month. The shop was thereafter purchased by the applicant from the successors-in-interest of Gurprit Singh, who were arrayed as respondents No. 8 to 10 in

the petition, vide sale deed dated 22.03.2010.

It is pleaded that the applicant was the owner of the shop in question which was rented out to respondent – DCM Limited (Delhi Cloth and General Mills Limited), which is a body corporate having its business of manufacturing and selling cloth throughout the country. As per the agreement, the demised shop was to be used solely by respondent – DCM Limited and not by anyone else and for no other purpose. It is pleaded that respondent – DCM Limited sublet the shop to other respondents who were liable to be evicted and respondent No. 1 had not even paid the arrears of rent since December, 2010. The demised premises were taken on rent by the said respondent for the retail sale of cloth manufactured by it through its employees whereas the manufacturing units was closed in the year 1990 itself. Furthermore, manufacturing units of its sister concerns were also closed in or around 1996 as per directions of the Hon'ble Supreme Court of India. The demised shop is pleaded to have been sublet to Ramesh Kumar, represented by his legal representatives arrayed as respondents No. 4 to 7 in the original petition (present petitioners). Ramesh Kumar passed away in April, 2011. The Managing Director, DCM Limited, it is stated, was no longer in possession or in effective control and management of the demised shop. It is pleaded in the petition that respondent – DCM Limited and its Managing Director had ceased to occupy the shop continuously for the period of over four months without any reasonable cause, which remained closed since June, 2010. The respondents were requested to vacate the premises but to no avail. Notice dated 01.04.2011 was served upon respondent – DCM Limited for vacating the demised premises. Reply dated 04.05.2011 was sent by the respondent – DCM Limited. While denying

subletting of the premises to Ramesh Kumar, it is stated that the respondent – DCM Limited was continuing its business through its authorised agent Subhash Chander and Ramesh Kumar had been earlier running the business as a representative of Subhash Chander. The premises were, however, not vacated. Hence, the petition was filed.

DCM Limited filed a written statement taking various preliminary objections. While admitting applicant (respondent No. 1 in this petition) to be the landlord of the premises, it is denied that the premises were sublet. It is stated that the demised premises were used to run cloth business, through Subhash Chander Mahajan, who was the appointed authorised agent to manage DCM Retail store and claimed that answering respondent is in possession of the demised premises through its agent.

The present petitioners filed a separate reply, also raising various preliminary objections. It is stated by the present petitioners that, they are in fact, tenants under the landlord directly in their own right. Ramesh Kumar, it is stated, was inducted as a tenant of the shop in dispute by the original owner since 1996 at a monthly rent of ₹1,000/- per month. As relations were cordial between Ramesh Kumar and the owner, no rent receipt was obtained. The present petitioners, it is stated, succeeded to the estate of Ramesh Kumar and are tenants of the demised premises and rent was paid by Ramesh Kumar to the original landlord. A false ground of subletting, it is stated, has been set up. Ramesh Kumar was never the authorised agent nor the business representative of Subhash Chander. It is stated that Ramesh Kumar and after his demise, the present petitioners are running the cloth business from the premises in question. Prayer for dismissal of the ejectment petition was made.

Respondent – Managing Director, DCM Limited as well as respondent No. 3 in the petition, Subhash Chander, the agent of DCM Limited appeared before the learned Rent Controller but thereafter no reply was filed on their behalf and they were both proceeded exparte vide orders dated 13.08.2013 and 14.08.2013 respectively. Respondents No. 8 to 10 in the petition and respondents No. 5, 6 and 7 in the present revision petition though proforma respondents, filed their reply. They admitted that the shop was rented out to respondent - DCM Limited by the original owner – Gurprit Singh Mann at the rate of ₹500/- per month and that the shop was purchased by the landlord in question on 02.03.2010. Following issues were framed by the learned Rent Controller on 04.12.2013 :-

- 1) Whether the respondents have been in arrears of rent? If so, at what rate?OPA
- 2) Whether the shop in dispute is required bonafide for personal necessity by the applicant?OPA
- 3) Whether the present application is not maintainable in the present form?OPR
- 4) Whether the present application is bad for mis-joinder of necessary parties?OPR
- 5) Whether the applicant has concealed the material facts from the Court?OPR
- 6) Relief.

Thereafter on 22.01.2016 the said issues were re-cast as under on framing of additional issues:-

- 1) Whether respondent No. 1 is in arrears of rent? If so, its effect?OPA
- 2) Whether respondent No. has sublet the demised shop to Ramesh Kumar? If so, its effect?OPA
- 3) Whether respondent No. 1 has ceased to occupy the demised shop? If so, its effect?OPA

- 4) Whether application is not maintainable in the present form? OPR
- 5) Whether application is bad for mis-joinder of necessary parties? OPR
- 6) Whether applicant has concealed the material facts from the Court? OPR
- 7) Relief.

Learned Rent Controller allowed the petition filed by the landlord on 22.01.2016. In the appeal filed by the present petitioners, the matter was remanded to the learned Rent Controller, by the learned Appellate Authority, with an observation that the learned Rent Controller should afford sufficient opportunity to the parties to lead evidence on the additional issues framed on 22.01.2016 and decide the matter afresh. However, after remand of the matter, no further evidence was led by any of the parties.

Learned Rent Controller vide order dated 29.11.2017 again allowed the petition filed by the landlords and ordered ejectment of the present petitioners from the demised premises on the ground that the premises in question were sublet by the original tenant and that the said tenant had ceased to occupy the premises in question. It is further observed that the present petitioners failed to prove on record that they were tenants, directly under the original owner. Appeal preferred by the present petitioners was dismissed by the learned Appellate Authority, Pathankot vide order dated 08.10.2018. Aggrieved therefrom, present revision petition has been filed by the petitioners.

Learned counsel for the petitioners argues that the learned courts below have grossly erred in law and on facts in allowing the ejectment petition filed by the landlord - respondent No. 1. It is contended

that the present petitioners have led sufficient evidence on record to show that they are tenants under the original owner. Merely because they were unable to produce any rent receipts cannot be a ground to order their ejectment. The petitioners' predecessor-in-interest Ramesh Kumar was inducted as a tenant in his own right in the year 1996. He was not an agent or representative of Subhash Chander of DCM Limited. Sufficient evidence, it is contended, has been brought on record to show that the present petitioner – Nisha Mahajan was running the business from the demised premises. In this view of the matter, it is submitted that the present petition be allowed and order dated 29.11.2017 passed by the learned Rent Controller, Pathankot well as order dated 08.10.2018 passed by the learned Appellate Authority, Pathankot, be set aside. Consequently, the petition filed by the landlord be dismissed.

I have heard learned counsel for the petitioners and have gone through the file with his assistance.

It is not in dispute that respondent No. 1 is the landlord/owner of the premises in question. It is further not in dispute that the demised premises were originally let out on rent to DCM Limited for running their retail shop in the year 1969 at the rate of ₹500/- per month. Respondent No.1 has taken a stand that business was being conducted from the premises through their authorised agent Subhash Chander and Ramesh Kumar who was a representative of Subhash Chander, was running the business from the said store. However, it is not denied that the textile units of respondent – DCM Limited were shut down in the year 1990 and thereafter the manufacturing units of its sister units were also closed in or around 1996.

The present petitioners, to the contrary, have laid the

foundation of their case on the ground that Ramesh Kumar had taken the premises on rent, directly from the landlord of the demised premises. Admittedly, there is no such evidence on record to prove and substantiate this stand. It is pertinent to note at this stage that it is not the case of the present petitioners, that Ramesh Kumar was running his shop as an agent of respondent – DCM Limited. Petitioner – Nisha Mahajan while testifying as RW4 has deposed that they are direct tenants under the landlord. It is denied that the premises were sublet to Ramesh Kumar for valuable consideration. It is the categorical stand of RW4 Nisha Mahajan, that the shop in question was let out to her husband Ramesh Kumar in June, 1996 at a monthly rent of ₹1,000/-. RW4 Nisha Mahajan in her cross examination, however, admitted that Subhash Chander had been working in the shop in dispute for the last 35 years, though she denied for want of knowledge, whether Subhash Chander was working as an agent of DCM Limited. She further volunteered that her husband was also working at the shop. Nisha Mahajan denied that any product of DCM Limited was sold at the shop, as no such product of DCM Limited was manufactured for the last 27-28 years. RW4 further stated that Ramesh Kumar had taken the shop on rent from its owner/landlord and was in exclusive possession thereof since 1980. Ramesh Kumar and Subhash Chander are admittedly brothers.

In the given facts and circumstances, it is rightly observed by the learned Appellate Authority that as per Clause 3 (ii) of Ex.R1 i.e. the agreement to sell dated 08.10.1969, originally executed between Gurprit Singh Mann and DCM Limited, the company had reserved to itself, the right to run the business either through its employee or through its agent or stockist on such terms, inter alia, as to the terms of rent of the premises, as

the company may deem fit. It is proved on record that Ramesh Kumar was not an employee, agent or stockist of DCM Limited, neither has such a plea been taken by the present petitioners. It is correctly observed by the learned Appellate Authority that it is proved on record that no activity related to DCM Limited was being carried on the demised premises and that Exs. R7 to R9 speak of only Subhash Chander as the authorised agent. Subhash Chander had clearly left the shop, which was unauthorisedly occupied by Ramesh Kumar which clearly falls within the ambit of subletting for valuable consideration. The present petitioners have failed to prove that they are tenants in their own right. At this stage, it is to be noticed that the electricity connection was disconnected on 16.02.2011 and a new connection was applied for on 05.06.2012 after filing of the present ejectment application on 27.01.2012. The petitioners have not been able to explain about the disconnection of the electricity connection for a period of more than one year. Though non consumption of electricity by itself, may not be sufficient to establish the fact that the petitioner has ceased to occupy the premises but it is indeed one of the supporting factors in addition to the other evidence on record for reaching the said conclusion.

It is a matter of record that the respondent – DCM Limited had stopped its manufacturing activities a long time prior to the filing of the ejectment petition. Subhash Chander is admittedly the brother of Ramesh Kumar. Subhash Chander had earlier been running this shop as an agent of DCM Limited and he had clearly sublet the same to his brother Ramesh Kumar. Ramesh Kumar passed away in April, 2011. AW2 Kamal Singh, LDC, Punjab State Power Corporation Ltd., Pathankot has deposed that the electricity connection to the demised premises was disconnected on

16.02.2011. An application for the new connection was thereafter moved by RW4. There is indeed no evidence on record to prove that the present petitioners were running any business from the demised premises from the period of June, 2011 till 28.01.2012 i.e. the institution of the present petition.

In this view of the matter, it has been rightly held by both the learned courts below that the shop remained closed continuously for the period of four months without any sufficient and reasonable cause. Both the learned courts have rendered concurrent findings of fact on a correct appreciation of the evidence on record.

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 the said 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 petitioners is unable to point out any illegality, infirmity or error of law in judgment dated 29.11.2017 passed by the learned Rent Controller, Pathankot as well as judgment dated 08.10.2018 passed by the learned Appellate Authority, Pathankot, which calls for any interference in exercise of revisional jurisdiction by this Court.

No other argument has been raised.

Present petition is, accordingly, dismissed with no order as to cost.

October 03, 2019
rts

(Lisa Gill)
Judge

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