

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

Civil Revision No. 2034 of 2019 (O&M)

Date of decision : September 23, 2019

Rakesh Kumar alias Labh Ram

.....Petitioner

Versus

Suresh Kumar

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Harkaran Singh, Advocate
for the petitioner.

LISA GILL, J.

Petitioner – landlord is aggrieved of judgment dated 20.11.2017 passed by the learned Rent Controller, Barnala whereby his petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (for short - 'the Act') has been dismissed. The petitioner also challenges judgment dated 21.11.2018 passed by the learned Appellate Authority, Barnala whereby his appeal against decision dated 20.11.2017 has also been dismissed.

Brief facts necessary for adjudication of the case are that the petitioner – landlord filed a petition under Section 13 of the Act seeking ejection of the respondent – Suresh Kumar from the demised property as detailed in his petition. It is pleaded that the respondent had taken a shop owned by the present petitioner, on rent, at the rate of ₹1350/- per month and executed rent note dated 01.08.2006, in respect thereof. It is further stated that the rent would be increased at the rate of ₹50/- per month. It is pleaded that the respondent did not prove to be a good tenant, he did not follow the terms and conditions of the rent note and he stopped paying rent to the petitioner since 01.04.2011. Despite request, he did not deposit the rent. Hence, the petition was filed.

Respondent contested the petition with a preliminary objection that there existed no relationship of landlord and tenant between the parties while admitting that the tenancy commenced from 01.08.2006 at the rate of rent, mentioned in the petition. However, the petitioner mortgaged the shop in dispute with one Sher Singh son of Kartar Singh. A memorandum of mortgage was executed and the petitioner authorised Sher Singh to recover rent from the respondent, which was treated as interest recovered from the petitioner, as the petitioner had obtained a sum of ₹50,000/- from Sher Singh. Accordingly, Sher Singh received the rent from the respondent from 01.04.2011 to 20.11.2012. Thereafter the respondent vacated the shop in dispute and possession thereof was handed over to the mortgagee - Sher Singh. The receipts regarding payment of rent for the said period as well as receipt regarding handing over possession of demised premises to Sher Singh on behalf of the petitioner was available with the respondent. Therefore, there was no relationship of landlord and tenant between the parties at the time of filing of the ejectment petition on 28.01.2013. Dismissal of the petition was sought.

Rejoinder was filed.

Following issues were framed by the learned Rent Controller:-

1. Whether there exists relationship of landlord and tenant between the petitioner and the respondent?OPA
2. If the above said issue is proved, whether the respondent is in arrears of rent and is liable to be evicted from the demised premises on the said ground?OPA
3. Whether the respondent has impaired the value and utility of the demised shop and is liable to be evicted on the said ground?OPA
4. Whether the present petition is not maintainable?OPR
5. Relief.

Learned trial Court on considering the evidence on record, facts and circumstances concluded that it was proved on record that the petitioner mortgaged the property in question with Sher Singh and had authorised Sher Singh to receive the rent in lieu of interest, to be paid by the petitioner. Possession of the shop was handed over to Sher Singh by the respondent. Thus, at the time of filing of the petition, relationship of landlord and tenant between the parties did not exist. Possession of the demised premises stood delivered to Sher Singh, the mortgagee of the landlord who was duly authorised by the landlord. Petition filed by the landlord was dismissed. Appeal preferred by the petitioner was also dismissed by the learned appellate Authority, Barnala vide impugned judgment dated 21.11.2018.

Aggrieved therefrom, present petition has been filed.

Learned counsel for the petitioner vehemently argues that both the learned courts below have grossly erred on facts and in law in dismissing the petition filed by the petitioner seeking eviction of the respondent. It is contended that the respondent has admitted the execution of the rent note as well as the boundaries of the shop in question. In fact, there are two shops belonging to the petitioner, out of which one has been mortgaged with Sher Singh and the other is still in possession of the respondent. These facts have been wrongly ignored by the learned courts below. It is, thus, prayed that this petition be allowed and judgment dated 20.11.2017 passed by the learned Rent Controller, Barnala as well as judgment dated 21.11.2018 passed by the learned Appellate Authority, Barnala be set aside. Consequently, petition under Section 13 of the Act filed by the petitioner be allowed and eviction of the respondent be ordered.

I have heard learned counsel for the petitioner and have gone

through the record with his able assistance.

It is a matter of record that the respondent admitted the execution of the rent note dated 01.08.2006 and taking on rent the demised premises on rent. However, it is the specific case of the respondent that the shop in question was mortgaged by the petitioner with Sher Singh, who has duly testified as RW1 before the learned Rent Controller. Mortgage deed (Ex.R1) executed by the petitioner in favour of Sher Singh has been duly admitted by the petitioner.

It is sought to be urged that the petitioner is the owner of two shops and the shop mortgaged with Sher Singh is different from the one which was let out to the respondent. This fact has been succinctly dealt with by the learned appellate Authority. It is specifically held that the boundaries mentioned in the mortgage deed are incorrect and the petitioner cannot gain any benefit out of the same. The shop let out by the petitioner and the respondent is mentioned to be having 'Utam Singh Saw Mill' on its Eastern side and 'Jhandewla road' on the Northern side, while the shop mortgaged to Sher Singh is reflected to have 'Uttam Singh Saw Mill' on the Northern side and the road on the Eastern side. The remaining boundaries are identical. Photograph (Ex.R4) has clearly resolved the matter as is observed by the learned Appellate Authority. It is specifically observed in the impugned judgment dated 21.11.2018 that photograph (Ex.R4) was shown to the petitioner during the course of arguments and the petitioner admitted before the learned Appellate Authority that the said photograph pertained to his shops and house. A tin door in the middle of the shops was acknowledged to be the entrance of the shop and there is no other shop in between the purported two shops. It is rightly held that the boundaries are wrongly

mentioned in the mortgage deed.

It is proved on record, by way of specific and categorical evidence, that rent for the period from 01.04.2011 to 20.11.2012 was paid by the respondent to Sher Singh, who was authorised by the petitioner himself to collect the same and furthermore possession of the demised premises was handed over to Sher Singh by the respondent. It is rightly held by the learned courts below that the respondent is not proved to be in possession of the shop let out to him and the relationship of the landlord and the tenant between the parties did not exist at the time of the filing of the petition under Section 13 of the Act. Both the learned courts have rendered concurrent findings of fact on a correct and proper 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 petitioner is unable to point out any illegality, infirmity or error of law in judgment dated 20.11.2017 passed by the learned Rent Controller, Barnala as well as judgment dated 21.11.2018 passed by the learned appellate Authority, Barnala, which call 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.

September 23, 2019

rts

(Lisa Gill)
Judge

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