

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 3255 of 2019(O&M)

Date of Decision:17.5.2019

Vijay Kumari Chopra

---Petitioner

versus

Varinder Sareen and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Vikas Bali, Advocate
for the petitioner**

**Mr. Puneet Jindal, Senior Advocate with
Ms. Ameena Singh and Mr. Ashutosh Gupta, Advocates
for the caveator-respondent**

Rekha Mittal, J.

By way of present petition filed under Article 227 of the Constitution of India, the petitioner has challenged three separate orders dated 20.10.2016 (Annexure P-8), 25.4.2019 (Annexure P-13) and 8.5.2019 (Annexure P-14) passed by the Rent Controller, Jalandhar whereby applications under Order 1 Rule 10, Order 6 Rule 17 and Order 14 Rule 5 of the Code of Civil Procedure (in short “the Code”), respectively, filed by the petitioner were dismissed.

Counsel for the petitioner would fairly concede that challenge to order dated 25.4.2019 and 8.5.2019 may survive for consideration only if plea of the petitioner in respect of challenge to order dated 20.10.2016 is

accepted by the Court.

Counsel for the petitioner would argue that Varinder Sareen-respondent No. 1 filed eviction application under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (in short “the Act”) in respect of shop alongwith basement/strong room and staircase forming part of property No. B-II-2481, situated at GT Road, Civil Line, Jalandhar known as Bhagat/Sareen/Leader Building against M/s Leader Jewellers through its partners Sham Sunder Chopra, Vipin Chopra and Amit Chopra wherein Kishore Sareen-respondent No. 2 has been impleaded as a proforma respondent. It is argued that petitioner Vijay Kumari Chopra purchased 25% share in the property in question vide sale deed dated 15.6.2010. It is further argued that as the petitioner became one of the co-sharers/co-owners of building No. B-II-2481 which is a joint property and no partition has ever taken place amongst all the co-sharers, she is entitle to be impleaded as a party in the eviction application filed by Sh. Varinder Sareen. It is further argued that the petitioner filed a suit for partition claiming 1/4th share by metes and bounds and permanent injunction restraining the other co-owners/co-sharers from raising construction and changing nature of the suit property and the same is pending in the Court.

Another submission made by counsel is that as Kishore Sareen another co-owner of the building in question has been impleaded as one of the respondents in the eviction application, there was no reason for respondent No. 1 not to implead the petitioner as a

party knowing it fully well that the petitioner has claimed a right in the building in question on the basis of sale deed dated 15.6.2010 in the suit for partition filed by her in which Varinder Sareen has also been arrayed as one of the defendants.

Counsel for the caveator, on the contrary, would argue that the application filed under Order 1 Rule 10 of the Code was dismissed on 20.10.2016 and the petitioner did not challenge the said order for a period of more than two years. Later, she filed one application for amendment of the written statement on behalf of M/s Leader Jewellers and another application under Order 14 Rule 5 of the Code for framing of additional issue(s). It is further argued that as the petitioner failed in her effort to sneak in the eviction proceedings on account of dismissal of her application for impleadment, she tried to overreach order passed by the court by filing the subsequent applications for amendment of the written statement and framing of additional issue. It is further argued that even the Rent Controller has dismissed those applications with the findings that the applications have been filed to have a back door entry which was not permitted from front side. It is argued with vehemence that challenge to the order passed way back in the year 2010 is liable to be rejected on the ground of delay and laches particularly in the circumstances that after dismissal of application for addition of petitioner as a party, the respondent-landlord has already closed his evidence and the case is pending for evidence of the tenants who are

none else but close family members of petitioner Vijay Kumari Chopra.

It is argued with vehemence that entire effort of the petitioner by filing separate applications at different stages of the eviction proceedings is nothing but abuse and misuse of process of law in order to stall the eviction proceedings initiated against M/s Leader Jewellers of which the husband and sons of the petitioner are partners as petitioner is the wife of Sham Sunder Chopra and mother of Vipan Kumar Chopra and Amit Chopra respondents therein. Another submission made by counsel is that the tenants in the property are playing a game by getting executed the sale deed propounded by the petitioner in order to save their eviction from the tenancy premises in respect whereof tenancy was created several years ago before the petitioner purportedly came in picture in the year 2010. In support of his contention, he has relied upon judgment of this Court **Ram Pal Thukral vs. Jagjit Singh and another 2009(4) RCR (Civil) 329**. Reference has also been made to another judgment of this court **Smt. Inderjit Kaur and others vs. Baij Nath 2003(2) RCR(Rent) 242**.

I have heard counsel for the parties and perused the paper book particularly various annexures appended with the petition.

Order 1 Rule 10(2) of the Code deals with that court may strike out or add parties. A relevant extract therefrom, reads as follows:-

“10. (2) The Court may strike out or add parties.—The court

may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.”

On due consideration of the aforesaid extract it become evident that the court is empowered at any stage of the proceedings to add name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely adjudicate upon and settle all the questions involved in the suit. This is not plea of the petitioner that her presence in the eviction proceedings is necessary in order to enable the court effectually and completely adjudicate upon and settle all the questions involved in the proceedings.

Indisputably, the tenancy was created long before the sale deed in respect of 25% of share has been allegedly executed in favour of the petitioner. The dispute with regard to ownership of the suit property is pending before the civil court. The Rent Controller is a Fora of limited jurisdiction that cannot entertain or decide the disputed questions of title. The subsequent applications filed by the petitioner for amendment of the written statement and framing of additional issue certainly indicate that the

petitioner by becoming a party in the eviction proceedings wants to rake up the issue of ownership in the building in question.

Counsel for the petitioner has submitted that if Kishore Sareen could be impleaded as one of the respondents in the eviction application why the petitioner has been left out to be so impleaded despite her having filed a suit for partition in which Varinder Sareen respondent No. 1 has been arrayed as defendant. Firstly, Kishore Sareen is only a proforma respondent. Secondly, Varinder Sareen is dominus litis and he cannot be compelled to implead a person as a party whose presence is not necessary before the Court. The petitioner is not one of the co-landlords in respect of of tenancy in favour of M/s Leader Jewellers.

This Court in **Ram Lal Thukral's case (supra)**, in para 6, has held, quoted thus:-

As regards the second objection that has been raised on behalf of the tenant that the petition is not maintainable, since a co-owner of the premises, namely the tenant's husband added as a legal representative to his mother Krishna Wati, had not consented to the petition and the petition itself cannot be prosecuted in the absence of concurrence of a co-owner. Learned counsel for the petitioner refers to a decision of the Hon'ble Supreme Court in Mohinder Prasad Jain Vs. Manohar Lal Jain JT 2006 (2) SC 620, where it holds that if a property in question is jointly owned by several persons and if consent of the co-owners is not shown, the eviction would not be permissible. The Hon'ble Supreme Court was laying down the law, while considering a petition for eviction under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 where the Court,

however, cautioned that the consent of other co-owners was not a precondition and so long as co-owners did not have objection to the eviction petition, the suit for eviction would be maintainable. Learned counsel appearing for the petitioner reads the judgment to an inference that such a petition would be maintainable only if it is not objected and in this case another co-owner has objected to the petition and therefore, the petition is not maintainable. This argument is opposed by learned counsel for the respondent and which, in my view, correct by that if only the tenancy had commenced at the instance of all the co-owners and the other co-owners could also be treated as landlord, an action for eviction at the instance of one co-owner alone without the consent of other co-owners would not be tenable. He points out that the initial letting itself had been made in the year 1980, when the present landlord was the only landlord. The rent note itself was executed by only one of the co-owners. The purchaser of the property under whom the tenant's husband now claims as a co-owner, has never acted in his capacity as a landlord at any time. Indeed, even Krishna Wati under whom he claims did not assert her right as a co-owner landlord at any point of time. The purchaser had assumed the possession of only the ground floor when the tenanted premises itself was with reference to the first floor and the second floor.”

In view of discussion made hereinbefore coupled with the observations extracted hereinbefore from the judgment in **Ram Lal Thukral's case (supra)** alongwith the fact that conduct of the petitioner is such that she wants to sneak in the proceedings by hook or crook in order to create hindrance in eviction proceeding against M/s Leader Jewellers, a

partnership concern of family of the petitioner, she is not entitle to any relief. I get fortified in my observations from the materials on record that initially she failed to join the proceedings as her application under Order 1 Rule 10 of the Code was dismissed but she did not challenge that order for more than two years but later tried to overreach that order by filing applications for amendment of written statement on behalf of 'Leader Jewellers' and application for framing of additional issues regarding ownership of Vijay Kumari and challenged all the aforesaid orders by filing the instant petition after delay of more than 2 years since her application for impleadment was dismissed. That being so, I do not find any merit in contention of the petitioner that orders impugned suffer from an error much less illegality, warranting intervention.

In view of what has been discussed hereinbefore, finding no merit, the petition fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

17.5.2019

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No