

CR No.1057 of 2017
Date of Decision: 17.09.2019

Ramesh Kumar

.....Petitioner

Versus

Adarsh Kumar and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr. Harsh Aggarwal, Advocate
for the petitioner.

Mr. Nandan Jindal, Advocate
for the respondent.

NIRMALJIT KAUR, J.

The present revision petition has been filed against the order and judgment dated 29.11.2016, passed by the Appellate Authority, whereby the order dated 08.08.2014, passed by the Rent Controller, allowing the ejectment petition, was set aside.

While praying for setting aside the order dated 29.11.2016 passed by the Appellate Authority, learned counsel for the petitioner submitted that the Appellate Authority had erred in holding that the necessary ingredients as required under Section 13 (3) (a) (ii) of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter to be referred as “the Act of 1949”) were not pleaded in the ejectment petition and went on to hold that the petitioner/landlord had not given the detail of the property

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owned by his son for whom the bonafide was pleaded, whereas, no such ground was ever raised by the respondents/tenants in their reply and nor there was any pleading that the ingredients as required under the Act of 1949 were not pleaded in the ejectment petition qua the son and nor any suggestion to the said effect was put to him even in the cross examination. It is further contended that the Appellate Authority has also erred in holding that the shop was transferred in the name of his daughter only to make up a ground for ejectment.

Learned counsel for the respondents however opposing the revision petition submitted that the landlord had appeared as AW-2 and admitted that he had another shop and he had given away one of the shop to his daughter and the same was done only to show that they did not have any other shop and the transaction to his daughter was a sham transaction and this fact is also evident from the fact that he is paying the house tax of another shop as also that he is continuing to pay the electric charges qua the shop, which has been transferred in the name of his daughter. The Appellate Authority while setting aside the findings recorded by the Rent Controller relied on the judgment in the case of Ajit Singh and another Vs. Jit Ram and another, 2008 (4) RCR (Civil) 390 as well as the judgment as rendered by this High Court in case of Rajiv Gupta Vs. Jiwan Ram, 2015 (1) RCR (Civil) 762, wherein the ejectment petition was held liable to be dismissed as the landlord had failed to mention that neither he nor his son were occupying any other building and nor they had got any shop vacated before filing of the ejectment petition observed in para 22 of the judgment dated 29.11.2016, as under:-

“22. Regarding above said requirement deposition of Sahil Kumar, AW-3 for whose necessity shop in question was intended to be vacated is totally silent. He did not deny the subject that he is not having any property in the Municipal area concerned.”

A perusal of the said judgment and order shows that the Appellate Authority has totally misread the evidence on record in order to adjudicate the same, it would be proper to reproduced para 9 of the ejectment petition. The same reads as under:-

“9. That the petitioner does not own or possess any other property within municipal limits of Dhuri, except a Karyana shop presently run by the petitioner near Municipal Committee, Dhuri. Neither the petitioner has vacated nor evicted any property under the Rent Act.”

The argument that there is no mention qua the property of the son has no merit inasmuch as in view of the following grounds:-

- a) The respondents/tenants did not plead in their written statement that the ingredients of the Act of 1949 were not satisfied qua the son;
- b) There was no pleading that the son has any other shop in the urban area of Dhuri;
- c) No suggestion was put to Ramesh Kumar, the present petitioner/landlord, regarding ownership/possession of any other shop by his son namely Sahil Kumar Garg;
- d) A specific suggestion was put to Sahil Kumar Garg (AW-3) son of the land lord, who specifically denied that he had any property in Dhuri in his name;

e) Even their own witnesses did not say that any property was owned by his son;

f) Ramesh Kumar, AW-2 deposed as under:

“Applicant is running a Karyana shop in Municipal Committee, Dhuri and except this applicant is having no other property of his ownership or in his possession in the Municipal limits of Dhuri and the applicant did not get vacated or get vacated any property under Rent Act.”

In any case, it is a well settled proposition of law that in case pleadings qua the ingredients mentioned in under Sections 13 (3) (a) (i) and 13 (3) (a) (ii) of the East Punjab Urban Rent Restriction Act, 1949, are missing then the same can be held as satisfied in case the landlord is able to lead the evidence to the said effect. In the judgment rendered in the case of Gurbaj Singh Vs. Parshotam Singh and others, 2011 (4) RCR (Civil) 518, learned Single Bench of this Court answered the question i.e. “Whether son of the landlord, for whose benefit the non-residential premises is sought to be got vacated, if not the landlord or the owner himself, is also required to plead the ingredients of Section 13(3)(a)(i) of the Act in the eviction petition?” held as under:-

“Thus, a close reading of the decision of the Supreme Court in the case of Ajit Singh and another (supra) shows that the person who maintains an eviction petition on the ground of bona fide necessity, has to be a landlord and has to plead all the mandatory ingredients of Section 13(3)(a) (i) of the Act in the eviction petition and even if the premises is required by the landlord for use and occupation of his son, the son of the landlord is not required to plead all the ingredients of Section 13(3)(a)(i) of the Act if he himself is not the landlord of the premises. Hence, the

second question is also answered accordingly.”

Another question i.e. “Whether the tenant can raise the question of non-compliance of mandatory provisions of Section 13(3)(a)(i) of the Act even if he did not question it in his reply nor ask for any issue in this regard for the purpose of trial?” was answered, thus :-

“But, at the same time, the Court cannot be oblivious to the fact that mere non- pleading of a fact, which is enshrined in the statute, can always be rectified if a relevant objection is taken at the initial stage. The petitioner failed to take any such objection in his reply to the petition. The pleadings have to be considered broadly in a rent petition where it is not captive to the strict law of interpretation which may be the situation in a civil suit. In rent proceedings, the Rent Controller is merely obliged to hold an inquiry to look into the averments which have been made in the petition". Besides these observations, as per Order 8 Rule 5 of the Code of Civil Procedure, 1908, every allegation of fact, if not denied specifically, is taken to be admitted except as against a person under disability. Hence, this fourth and last question is also decided accordingly.”

From the above, it is evident that the learned Single Bench of this High Court after discussing the case of *Ajit Singh (supra)* held that the son is not required to plead all the ingredients as he himself is not the landlord and that in case the son appears in the witness box and depose on oath that he does not own or possess any other non-residential building then the non pleading of the ingredients would not be fatal to the ejectment petition especially when the tenants did not challenge the averments made in the ejectment petition and did not ask any such issue to be framed qua

Applying the test in the present case on the facts as noted above, this Court finds that the Appellate Authority has erred in setting aside the judgment and order dated 08.08.2014 passed by the Rent Controller as it failed to notice that the tenants did not raise any such objection in their written statement and nor any such issue was framed and the landlord was not even cross examined on the said issue qua any another building, if at all, owned by his son. Moreover, his son Sahil Kumar Garg had also specifically denied that he had owned any another shop in Dhuri in his name.

The second ground on the basis of which the Appellate Authority set aside the order of the Rent Controller was that the petitioner had transferred one of the shop in the name of his daughter in order to make a ground for ejectment. The Appellate Authority failed to see that the shop was purchased on 27.04.2012 and the same was transferred vide family settlement dated 05.06.2012. The continuation of the electric meter in his name in itself sufficient to show that he is still the owner. To conclude the same was transferred only to create a ground for ejectment petition is a total imagination and on presumption of the Appellate Authority especially when the family settlement Ex.A-6 was placed on record as also the copy of rent deed by which his daughter given the shop on rent to one Ashu Dhand and the same was marked as mark-A. As per the pleadings, the statement and evidence on record, the son of the petitioner namely Sahil Kumar Garg was a BCA graduate and wants to open his own computer business at Dhuri for which the disputed shop was most suitable. Further, the respondents failed to show that the petitioner owned any other shop.

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In view of the above, the order dated 29.11.2016 passed by the Appellate Authority deserves to be set aside being contrary to the evidence on record as well as the settled proposition of law.

Accordingly, the present revision petition is allowed and the order dated 29.11.2016 passed by the Appellate Authority is set aside and order dated 08.08.2014 passed by the Rent Controller is upheld.

17.09.2019

sandeep

**(NIRMALJIT KAUR)
JUDGE**

Whether Speaking/Reasoned : Yes/No

Whether Reportable : Yes/No