

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

Civil Revision No.2847 of 2011(O&M)  
Date of Order:08.09.2021

**Shiv Kumar and others**

**..Petitioners**

**Versus**

**Dharampal**

**..Respondent**

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Amit Jain, Sr. Advocate, with  
Mr. Varun Parkash, Advocate  
for the petitioners.

Mr. M.L.Sarin, Sr. Advocate, with  
Ms. Hemani Sarin, Advocate  
for the respondent.

**ANIL KSHETARPAL, J.**

The hearing of the case was held through video conferencing  
on account of restricted functioning of the Courts.

Through this revision petition, filed under Section 15(6) of the  
Haryana Urban (Control of Rent & Eviction) Act, 1973 (hereinafter referred  
to as 'the 1973 Act'), the petitioners(landlords) assail the correctness of the  
order passed by the Appellate Authority which in turn reversed the  
ejectment order passed by the Rent Controller.

In the considered view of this Court, the issue which arises for  
consideration is “whether the Court, while exercising its revisional  
jurisdiction under the 1973 Act, has no jurisdiction to interfere even after  
finding that the judgment passed by the Appellate Authority is perverse and  
erroneous, being a result of misinterpretation of evidence?”

Learned senior counsel representing the tenant(respondent)  
while drawing the attention of the Court to the judgment of the 5 Judge

Bench of the Hon'ble Supreme Court in **Hindustan Petroleum Corporation Ltd. vs. Dilbahar Singh(2014) 9 SCC 78**, contends that the High Court is de-barred from interfering in the finding of fact arrived at by the Appellate Authority. He insists that there is an absolute bar in exercising the revisional jurisdiction once the Appellate Authority has returned a finding of fact even when such a finding is discovered to be completely erroneous. On a careful reading of the judgment passed by the 5 Judge Bench in **Hindustan Petroleum (supra)**, it is apparent that the Hon'ble Supreme Court has itself held that if the court while exercising revisional jurisdiction finds that the finding of the Court is 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, it is open to correction by the revisional Court. Paragraph 43 of the aforesaid judgment is extracted as under:-

*“43. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court/First Appellate Authority because on re-appreciation of the evidence, its view is different from the Court/Authority below. 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 re-appreciate 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. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.”*

Thus, it is apparent that there is no absolute prohibition from interfering in the exercise of revisional jurisdiction.

### **FACTS**

As many as 5 petitioners (4 amongst them are brothers and the 5<sup>th</sup> one is their nephew) filed a joint petition under Section 13 of the 1973 Act. Petitioner no.3-Uma Shankar asserted that he requires the premises for his son Rishi Kumar, who wants to use the premises for running a shop of readymade garments. It is asserted that his son Rishi Kumar has completed the study of Chartered Accountancy (Inter), however, could not succeed in Chartered Accountancy (Final). Since, he is unemployed, therefore, he wants to start a shop. Similarly, petitioner no.4-Kishan Lal asserted that his

two sons are unemployed. The first son Atul Kumar is also pursuing the study of Chartered Accountancy and has received training in computers, whereas Amit Kumar, the second son, is B.Sc. with masters in Computer Science, being unemployed, they want to do the business in computers. It is important to note that the tenanted premises is located in two parts. The first part is towards Western side of the house which is in the shape of a godown. The second part is towards the Eastern side of the property which is in the shape of a shop. Apart therefrom, the landlords have constructed two more shops and carved out certain spaces which is called as almirah type shop having depth of 2-3 feet only. In one shop, Mahesh Kumar, son of one of the brothers, is running his business of readymade garments under the name of Rishi Garments. There is another shop which was in the tenancy of Rajesh Crockery House. The same has been recently vacated on account of bonafide requirement of Mahesh Kumar, who wants to expand his business.

**ANALYSIS BY THE BENCH**

The Rent Controller, on appreciation of evidence, found merit in the case of the landlords and therefore, ordered eviction of the respondent(tenant), whereas the Appellate Authority has reversed the order of eviction. After having carefully read the judgment passed by the Appellate Authority, it is apparent that the judgment suffers from perversity. On behalf of the landlords, Umashankar one of the brother has appeared as PW1, whereas Kishan Lal, another brother, has appeared as PW3. Rishi Kumar has appeared as PW4. To demonstrate the perversity, it is appropriate to extract para 22 and 23 of the judgment of the Appellate Authority.

*“22. But it is point out that in cross examination PW4 has taken a contradictory stand. As pointed out above, PW4 in his examination in which has stated that he is unemployed. But in cross-examination PW4 categorically admitted that he had passed CA in November 2007. PW4 also admitted that he is now working as Executive Officer in a Chartered Accountant Firm. PW4 also stated that the firm in which he is working is Chartered Accountant Firm of all India level. PW4 also admitted that he is getting about Rs.4.25 lacs annually as emoluments. PW4 also admitted that he will be regularized after one year.*

*23. The statement of PW4 accordingly shows that he has tried to conceal the material facts from the court with a malafide intention to bring the case within the sphere of the provisions of Rent Act in order to seek ejectment of the tenant-present appellant Dharampal on the ground of personal necessity. Hence, it adversely reflects on his act and conduct.”*

It is significant to note that on 13.11.2007, PW4-Rishi Kumar tendered his affidavit in lieu of his deposition in the examination-in-chief, wherein he made a statement that he is studying Chartered Accountancy. He was cross-examined on 08.10.2008, after a period of nearly one year. Shri Rishi Kumar in the very first sentence of the cross examination has admitted that now he has successfully cleared the examination of Chartered Accountant, the result of which was declared somewhere in the month of

November, 2007. In such circumstances, the Appellate Authority without looking into the dates of the examination-in-chief and the cross-examinations made observation that PW4 has tried to conceal material facts from the court. It may be noticed here that PW4 has stated that he, presently, is working in a firm as a Chartered Accountant on a temporary basis. In such circumstances, once there has been a subsequent development, the Appellate Authority should have appreciated that fact in a proper perspective. Similarly, in para 27, the Appellate Authority has, again, made an observation that PW1-Uma Shankar has made a false and wrong statement. His statement was recorded on 11.05.2007. He stated that his son-Rishi Kumar could not clear the CA examination. In the month of May, 2007, Rishi Kumar had not cleared the examination, although, he has passed it subsequently in the month of November, 2007. In such circumstances, the Court even after noticing that Rishi Kumar passed the CA examination in the month of November, 2007, held that the statement of PW1 recorded on 11.05.2007, is false and incorrect.

Furthermore, the Appellate Authority, in para 31 of the judgment, observed as under:-

*31. However, it is pointed out that PW3 has also made futile attempt to conceal the material facts from the Court thereby alleging that his both sons are unemployed. But in cross examination PW3 has made a contradictory statement thereby deposing that his son Amit is working in Gurgaon for the last 5-6 months. PW3 also stated that as per his knowledge both are having monthly salary of Rs.30000/- each.*

It may be noticed here that PW3 tendered his affidavit in examination-in-chief on 13.11.2007, however, he was cross examined on 10.10.2009 i.e. after a period of nearly 2 years. During the intervening period, both his sons joined the service. Hence, in cross-examination he admitted that Atul Kumar has started doing private job in Gurugram since the last 5-6 months whereas Amit Kumar has joined service around 1½ year back at Pune. However, he stated that he wishes that they should do their own business. In such circumstances, it is apparent that the Appellate Authority not only overlooked the material evidence rather committed a factual mistake in appreciation whereof.

Learned counsel representing the respondent has also filed an application for bringing on record the subsequent event. It has been pointed out that a shop which was in occupation of Rajesh Crockery House has fallen vacant. The respondent has not placed on file any copy of the judgment. However, on careful perusal of the statement of the tenant Dharam Pal (respondent herein), it is apparent that the landlord has sought eviction of the shop in occupation of Rajesh Crockery House for the bonafide requirement of his shop for Mahesh Kumar, who is already running a shop in the adjoining shop. Mahesh Kumar wants to expand his shop and the courts, after appreciating the evidence, found that his requirement is bonafide.

The learned counsel representing the tenant has also made an attempt by drawing the attention of the court to Ex.P3. He submits that the landlords have rented out three shops which could be easily utilized by the landlords. From a careful perusal of Ex.P3, it is apparent that those premises have been constructed having the depth of almirah (cupboard)

only. These have been referred as “almirah like shops”. In the considered view of this Court, the landlords or other children cannot be forced to operate in a very small area. On a careful examination of Ex.P3, it is apparent that these shops have very little depth and are not fit to be used as proper shops. Ordinarily, such shops can be used for running Pan shop etc.

It may be noted here that the eviction petition was filed on 25.03.2006. At that time, Amit Kumar had completed his study, whereas Rishi Kumar and Attar Kumar were still pursuing their study of Chartered Accountancy. During the pendency of the petition, both have successfully passed their examination. The decision in the present petition has been prolonged for a period of more than 15 years. In such circumstances, it is not appropriate to expect from the landlords or their children to keep hoping and waiting for final order of eviction which may take decades to come or may not come at all while maintaining status quo with respect to their work by refusing to take up any job or business even on a temporary basis. It will not be appropriate to dismiss the eviction petition, particularly when Krishan Lal has specifically stated that he wishes that his children should start doing business, after the vacant possession of the tenanted premises is handed over. Moreover, Rishi Kumar has appeared as PW4 and affirmed that he is doing a temporary service and wishes to start his business of readymade garments eventually.

Keeping in view the aforesaid discussion, it is discovered that the judgment passed by the Appellate Authority suffers from perversity and therefore, the same deserves to be set aside. Hence, while setting aside the judgment of the Appellate Authority, the order passed by the Rent Controller is restored.

Hence, the revision petition is allowed.

The tenant is granted two months time to hand over the vacant possession of the premises to the landlords.

All the pending miscellaneous applications, if any, are also disposed of.

**08<sup>th</sup> September, 2021**

*nt*

**(ANIL KSHETARPAL)  
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No