

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1)

CR-3167-2016 (O&M)

Harvinder Singh

....Petitioner

Versus

Harvinder Kaur

....Respondent

(2)

CR-3170-2016 (O&M)

Harvinder Singh

....Petitioner

Versus

Harvinder Kaur

....Respondent

Reserved on: 13.01.2021

Decided on: 02.02.2021

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.Roopak Bansal, Advocate, for the petitioner.

Mr.Pankaj Sharma, Advocate, for the respondent.

(The proceedings are being conducted through video conferencing,
as per instructions.)

G.S. SANDHAWALIA, J.

The present judgment shall dispose of two Civil Revisions bearing CR-3167 & 3170-2016, since they are based on identical facts and between the same parties.

The premises in question is a shop and a godown which were rented out and eviction has been ordered on 11.05.2015 on account of failure of the tenant to deposit the provisional rent as assessed by the Rent Controller, Khanna, for the premises. The same has also been upheld in appeal by the Appellate Authority on 05.04.2016. Resultantly the petitioner-tenant, being aggrieved against the said orders of eviction, is before this Court in a revision petition filed under Section 15(5) of the East Punjab Urban Rent Restriction Act, 1949.

Counsel for the petitioner has, accordingly, submitted that once the relationship of landlord-tenant was disputed inter se the parties, no provisional rent was liable to be assessed and the eviction order, thus, was not justified. It is, accordingly, submitted that an issue should have been framed on that account and thereafter, at the time of final disposal, the Rent Controller could have come to the finding that there was a relationship, as such and to order eviction, thereafter. Reliance has been placed upto the judgment passed in **CR-2255-2009** titled *M/s Chopra Jewellers Vs. Rajendr Pal Gupta*, decided on 16.09.2009, wherein this Court had set aside the order whereby provisional rent had been assessed and directions had been issued to frame specific issues as to whether there existed a relationship as such.

Counsel for the respondent-landlady, on the other hand, submitted that the mala fides of the tenant are apparent as he has not denied that he was a tenant in the premises but contended that the relationship was with the son of the landlady, namely, Amrinder Singh Walia and it was pleaded that it was an oral tenancy. It was further submitted that in the present case, there was a rent note dated 01.08.2011 between the parties and thus, in the absence of any other proof, the Rent Controller was justified in assessing the provisional rent by noticing the said fact that prima facie there was nothing to show that the rent note was forged and fabricated, rather it had a clause of enhancement. It was, thus, contended that the said order assessing the provisional rent dated 11.05.2015 (Annexure R-1) had been challenged before the Appellate

Authority and the appeal had been dismissed being not maintainable and therefore, the said order having become final, the petitioner, as such, could not challenge the consequential order of ejectment. It is further contended that even a Civil Suit had been filed against the son of the landlady restraining him from taking possession of the premises which had been dismissed wherein it was admitted that there existed relationship of landlord-tenant between the parties and therefore, the tenant could not be permitted to blow hot and cold. Reliance was placed upon the findings of the Appellate Authority which castigated the conduct of the petitioner and that the landlady had purposely not been impleaded in the suit for permanent injunction and thus, it had also dismissed the appeal filed by the petitioner seeking the relief of permanent injunction.

After hearing the arguments of counsels for the parties and perusing the record, this Court is of the opinion that it is a classic case of misuse by the tenant. He cannot be permitted to blow hot and cold at the same time and cannot continue to occupy the premises without payment of rent by denying the relationship of landlord-tenant. For coming to the said conclusion, few facts would necessarily have to be taken into consideration.

The petitions for eviction were filed on 26.04.2014 from the two premises in question which are a shop and a godown, on the ground of non-payment of rent from 01.08.2013 which was stated to be of Rs.4410/- per month in one case and Rs.3197.50 in the other case. The

petitioner-tenant denied the relationship of landlord-tenant. Prior to that, the suit for permanent injunction had been filed against the landlady's son, Amrinder Singh Walia restraining him from dispossessing the tenant illegally and forcibly from the rented premises of a shop and a godown shown in red colour in the plaint. The plea taken was that the rate of rent was settled Rs.1500/- per month and the tenancy was oral which was in the presence of Rupinder Singh, brother of the tenant and one Mukesh Kumar and the rent paid was upto 31.01.2014.

The suit was contested on the ground the property was owned by the landlady who is the mother of the defendant and the tenancy was about 7 ½ years back @ Rs.2250/- per month with the increase clause of 5% every year. Thereafter, on 01.08.2011, the rent note was executed whereby Rs.2900/- per month was the settled rent with the increase clause of 5% apart from payment of electricity charges and house tax. Thus, there existed a relationship with the present landlady and mother of the defendant and the ejectment petition had already been filed by her. It was further mentioned that there was a property situated on the southern side of the shop which had been taken on rent @ Rs.4000/- per month at the same terms and conditions and the rent note dated 01.08.2011 had also been executed for which ejectment petition is also pending.

In the rent proceedings, the petitioner denied the relationship of landlord-tenant and took the plea that the rent note was forged and fabricated. Resultantly, provisional rent was assessed by the Rent

Controller by noticing that the admission was that the property had been taken on rent from the son of the landlady and he had admitted himself to be a tenant in the premises. Prima facie, there was nothing to show that the rent note was a forged and fabricated document and there was a clause regarding the increase of 5% every year. Whether the rent note was not forged or fabricated being a matter of evidence and prima facie there was sufficient material to assess the provisional rent, which, in one case, was assessed at Rs.71,935/- from the period from 01.08.2013 till 31.03.2015 along with interest and Rs.1000/- as per order dated 13.03.2015. Similarly, in the other case, provisional rent was assessed at Rs.98,831.4/- vide order dated 13.03.2015 and the rent was to be tendered by 13.04.2015.

The petitioner-tenant filed appeals before the Appellate Authority which passed an order dated 30.03.2015 restraining the Rent Controller from passing final orders till 16.04.2015. The appeals were dismissed on 04.05.2015 on the ground of maintainability. Thereafter, the ejectment order was passed on 11.05.2015 by placing reliance upon the judgment in **Rakesh Wadhawan Vs. M/s Jagdamba Industrial Corporation & others 2002 (1) RCR (Rent) 514** on the principle that on the failure of the tenant to comply, nothing else remains to be done. Reliance was also placed upon another judgment of this Court in **Birinder Khullar Vs. Maninder Singh 2011 (2) RCR (Civil) 751** wherein this Court has held that the Rent Controller has no power of extending the time and in case of non-payment, eviction has to follow.

In the meantime, the suit for permanent injunction was also decided on 02.09.2015. The rent notes showing the relationship between the parties were placed on record as Exs.D1 & D2 which were proved by one of the witnesses. The respondent-landlady's son also examined the handwriting expert to falsify the claim of the tenant as to whether he had not signed the rent notes. Resultantly, issue No.2 that the tenant had suppressed material facts from the Court, was decided against the present petitioner and it was held that injunction is an equitable relief and it cannot be granted to a person who does not come to the Court with clean hands. The issue of the suit being bad for non-joinder of parties was also decided against the tenant.

The Appellate Authority had dismissed the appeal keeping in view the close relationship between the respondent-landlady and the alleged landlord who is none else but the son and had come to the conclusion that an effort was made to cheat the landlady and without paying the provisional rent, he was enjoying the property. The petitioner also filed an appeal against the dismissal of his suit on 02.09.2015 in which also the findings have been recorded that there is an admission and there is evidence that the present respondent is the owner of the suit property. The Appellate Court also noticed that the plea of oral tenancy was taken and the fact that it was settled in the presence of the brother of the tenant and one Mukesh Kumar, but none of the two persons had been examined in support of his case and neither any authentic document had been placed on record of the file. It was also noticed that no complaint

had been filed regarding the forgery of the rent note. Resultantly, the findings of the Trial Court were upheld that the tenant had not come to the Court with clean hands, while dismissing the appeal on 18.03.2017 and noticing as under:

“18. In the plaint the appellant took plea that the respondent is owner of the suit property. However in his cross-examination he admitted that the suit property is owned by the mother of the respondent. This court is of the view that the appellant took the plea in the plaint regarding ownership of the respondent relating to suit property just to mislead the court.

19. In the light to the above discussion this court is of the view that the appellant has not come to the court with clean hands. The appellant has also failed to prove that he was having any cause of action or locus-standi to file the suit. As Harwinder Kaur, the owner of the suit property was not made party to the suit and rather her son is impleaded as respondent-defendant, the trial court rightly held that the suit is bad for misjoinder and non joinder of parties.

20. It is settled law that a litigant who approaches the court with tainted hands is not entitled to get any relief. In this context reference be made to **Dalip Singh Vs. State of U.P. and others (2010) 2 SCC 114**. Thus the trial court rightly dismissed the suit of the appellant. Accordingly the findings of the trial court regarding all the issues are hereby affirmed.

21. Consequently this appeal fails and is hereby dismissed with costs. Decree sheet be prepared accordingly. Record of trial court be returned. Appeal file be consigned to the record room.”

Keeping in view the cumulative facts discussed above, this Court is of the opinion that the order assessing the provisional rent had already been passed on 11.05.2015 but the same was never challenged before this Court on the ground that in the absence of the relationship the

same could not have been done. The said order became final inter se the parties as the appeal was filed which was not maintainable before the Appellate Authority which was also dismissed on 04.05.2015. No challenge was also raised to the same and therefore, in the present set of proceedings, the petitioner cannot now challenge the consequential order of ejectment only on the fact that provisional rent had not been paid.

Similar issue also arose before the Division Bench of this Court in **Rajan @ Raj Kumar Vs. Rakesh Kumar 2010 (2) PLR 201**, wherein reference had been made on account of two different views taken by the Single Benches of this Court, keeping in view the observations of Rakesh Wadhawan's case (supra) wherein it was noticed that on account of unscrupulous landlords making highly inflated claim of rent, provision for interim order of assessment of rent had to be made to solve the problem. It was noticed that the matter was further taken up by the Three Judges Bench of the Apex Court in **Vinod Kumar Vs. Prem Lata 2003 (2) RCR (Rent) 329**, wherein the earlier view in Rakesh Wadhawan's case (supra) was reiterated. Resultantly, it was held that the view taken in **Madan Lal & another Vs. Baldev Raj 2004 (2) PLR 834** was the correct view that if the tenant fails to make the payment of rent, the order of ejectment has to follow and nothing more is required to be done. Thus, it was held in the facts of the said case that the plea taken by the tenant was that the rent deed had been secured by fraud under police pressure @ Rs.2800/- per month. It was held that the plea of the tenant did not have any merit as no contemporaneous complaint to that effect

had been made and the argument of the counsel for the tenant was rejected that the provisional assessment had wrongly been made and thus, on non-deposit of the same, only eviction had to follow.

In the present case also, the situation is similar. The rent notes have already been proved in the Civil proceedings not only by examining the witness of the rent note but also the handwriting expert. The conduct of the tenant has been noticed and that he has admitted that the property was owned by the present respondent but he had chosen to litigate against the son without impleading her also in order to create multiplicity of litigation. Thus, the effort of the tenant is only to avoid the payment of rent which had rightly been assessed by the Rent Controller wayback on 13.03.2015 for both the premises in question. In Vinod Kumar (supra) while reiterating the judgment in Rakesh Wadhawan (supra), it was also noticed by the Apex Court that the balance has to be struck between the tenant and the landlord but at the same time, the landlord is not to be deprived of his legitimate expectations to be paid regularly for the use and occupation of the premises. Thus, in the opinion of this Court, it is the tenant who has deliberately taken a wrong plea and had entailed the consequential order of eviction. The judgment of M/s Chopra Jewellers (supra) would not come to the help of the petitioner since in the said case, the relationship of landlord-tenant had been denied and the tenancy was of a stranger, as such and in such circumstances, the order of assessment of provisional rent had been set aside.

In the present case, as noticed, the tenant has been mischievously setting up a wrong plea of tenancy with the son of the landlady and thus, trying to avoid the payment of rent and thus, can be called a unscrupulous tenant in the words of the Apex Court as the landlord has been deprived of the legitimate expectations of payment of rent. The relevant part of the judgment in Vinod Kumar (supra) reads as under:

“8. Rajinder Kumar Joshi 's case is under the [Punjab Act](#). There also the Court had noticed a lacuna in the legislative drafting raising a contention worthy of serious consideration and the hardship to which a tenant may be put where the landlord makes a demand on the tenant for rent which is not due from him, as was found to have been done in that case. The Court was faced with a dilemma in adopting either interpretation. If the provisions of [Section 13\(2\)\(i\)](#) of the Act were to be so interpreted as to require the tenant to tender the rent as demanded (though the demand is exaggerated by reference to the rate of rent or the period of default) or to face the consequences of eviction from the rented premises, the provision would result in causing hardship to the tenant. On the other hand, to hold the requirement of the proviso to [Section 13\(2\)\(i\)](#) to tender the rent as meaning the tender of the rent as the tenant thinks he is in arrears of, would render nugatory the requirements of the said proviso. The Court felt the need for striking a balance between the two situations so as not to render the protection given by the Act to the tenant illusory, and at the same time not to deprive the landlord of his minimum legitimate expectation to be paid regularly the rent for the use and occupation of his premises. The solution which the Court provided was in the background of the facts of that case, and is hence a limited one. The Court said that if

the rate of rent is not fixed or becomes the subject matter of dispute, the tenant may have resort to [Section 4](#) of the Act and apply to the Controller to fix the fair rent failing which he must deposit the rent at the rate as demanded by the landlord. If there is any dispute as to the period of default, the tenant may deposit the rent which he thinks to be in arrears, but he must take the risk for doing so. If it is proved ultimately that the rent paid or tendered by him was less than what was due, he must face eviction. Such an interpretation gives an uncertainty to the litigation and does not take care of several situations which may emerge in a litigation other than the one as arose in that case before the Court.”

Resultantly, keeping in view the above facts, this Court is of the opinion that the orders passed by the Courts below do not suffer from any illegality or infirmity which would warrant interference in revisional jurisdiction. Accordingly, the present revision petitions are dismissed. It is made clear that it is open to the landlady to recover the arrears of rent during the period the petitioner has remained in occupation. However, the petitioner would be entitled for the benefits of adjustment of the rent which he has already allegedly paid. All misc. applications are also disposed off, accordingly.

02.02.2021
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*