

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

Civil Revision No. 825 of 2021 (O&M)

Date of decision: 03.12.2021

Mulkh Raj

...Petitioner

Versus

Sukhdev Singh

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Nitin Jain, Advocate, for the petitioner.

Mr. Lupil Gupta, Advocate, for the respondent.

(Presence marked through video conference)

Arun Monga, J.

Before this court is a landlord impugning learned appellate authority/first appellate court judgment dated 25.02.2021 whereby a judgment dated 27.04.2018 rendered by Rent Controller, Ferozepur has been reversed, resulting in dismissal of his ejectment petition filed under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (in short 'Act of 1949'). Grounds of ejectment were/are non-payment of arrears of rent, personal necessity and the demised premises being in dilapidated condition not fit for human habitation.

2. Vide short order dated 03.12.2021, this Civil Revision was allowed and reasons were to follow. Hence this detailed order.

3. Brief facts first. Demised premises is a shop situated at Bazar No.5, Ferozepur Cantt. Petitioner along with Kamal Kumar purchased the premises in question from Bimla Rani vide registered sale-deed dated 13.07.2009. At that time the respondent was existing tenant in the shop. Later on, Kamal Kumar also withdrew from the ownership of the property in question by accepting proportionate payment of his share. Monthly rent is/was Rs. 3,000/- besides

house tax and electricity charges. The respondent has been carrying on business of refrigerator repairs in the shop in question. The respondent allegedly did not pay rent from 13.07.2009 till date of ejectment petition despite requests made by the petitioner. Other grounds taken in the ejectment petition by the petitioner are bonafide personal necessity, use and occupation for establishing business of for his son, aged about 23 years, as goldsmith. It is also averred in the petition that the petitioner wants to reconstruct the demised shop along with the adjacent shop, as a single shop would not be sufficient for good business. An ejectment application filed qua the adjacent shop, owned by the petitioner, on the ground of non-payment of rent has already been allowed by the learned Rent Controller, Ferozpur. The petitioner wants to construct one shop in place of two shops by demolishing the old structure after getting the same vacated from both the tenants. It is also pleaded that the demised premises is not fit for human habitation. It is too old, constructed more than 50years ago, has outlived its life and is in dilapidated condition.

4. The respondent-tenant resisted the claim of landlord. He inter alia pleaded that the petitioner is neither owner nor landlord of the shop in question. He denied the sale of the property to the petitioner. It is also denied that the respondent was a tenant of vendor Bimla Rani. The platform over which the shop in question exists was constructed by the respondent himself from his own funds in the year 1992-93 and since then he is in occupation of the same. The predecessor-in-interest of the petitioner was also neither owner nor landlord of the demised shop nor the respondent ever paid rent to any person since he constructed the shop in the year 1992-93. He denied that son of the petitioner wants to start his business as a goldsmith. The petitioner has already constructed three shops in property no. 60-61, Bazar No.5, Ferozpur Cantt. The respondent has no concern with the adjoining shop allegedly vacated by tenant therein. It

has been denied that the demised premises is either unsafe or unfit for human habitation while reiterating that the same was constructed by the respondent himself in the year 1992-93.

5. Based on the pleadings, the following issues were framed by the learned Rent Controller:

- “1. Whether the respondent is in arrears of rent qua demised premises? OPA*
- 2. Whether the petitioner requires the demises premises for his bonafide necessity ? OPA*
- 3. Whether there exists relationship of landlord and tenant between the parties? OPA*
- 4. Whether the petition is false, frivolous and vexatious to the knowledge of petitioner? OPR*
- 5. Relief.”*

6. After considering the respective evidence adduced by the parties, the learned Rent Controller held that the relationship of landlord and tenant stood proved, allowed the eviction petition on the grounds of the respondent denying the relationship of landlord and tenant; personal necessity and bonafide requirement of the petitioner. The building was also held to be unsafe and unfit for human habitation stating that it is in dilapidated condition. Under issue No.1 it was observed that arrears of rent to the applicant/landlord could only be assessed for the last three years and not from 13.07.2009 as claimed by him and the tenant was held to be in arrears of rent @ Rs. 3000/- per month for the preceding three years which came to Rs. 1,08,000/- alongwith interest @ 6% with costs and the issue was decided accordingly. The ejectment application was allowed vide order dated 27.07.2018 passed by the learned Rent Controller on the grounds of intentionally denying the relationship of landlord and tenant; personal necessity and bonafide requirement of the applicant and the building being in deteriorated condition, unsafe and unfit for human habitation.

Both parties filed appeals against the said order. These were decided by the learned Appellate Authority vide the impugned common order dated

25.02.2021, whereby the learned Appellate Authority reversed the finding of the learned Rent Controller on issue No. 3 holding that the landlord has failed to prove that respondent was his tenant. It was also held that in the absence of such proof, the petitioner can only seek the eviction/ dispossession of the respondent on the basis of his title in accordance with the law by filing a civil suit, but not under the East Punjab Urban Rent Restriction Act, 1949. Proof of being landlord is a condition precedent to set up the tenancy relationship. On this basis, the learned Appellate Authority passed the impugned order thereby accepting the tenant's appeal and dismissing the ejectment petition. The learned Appellate Authority while passing the impugned order, neither recorded his own findings nor discussed or altered the findings recorded by the learned Rent Controller in favour of the petitioner and against the respondent on issues No. 1, 2 and 4.

7. Feeling aggrieved, the landlord has preferred the instant revision petition.

8. Learned counsel for the petitioner submits that the Appellate Authority has mainly allowed the appeal of the respondent-tenant on the ground that the petitioner has failed to prove relationship of landlord and tenant between the parties qua the demised shop. However, the learned Appellate Authority lost sight of the order passed by this Court in Civil Revision No. 3937 of 2019 titled as Sukhdev Singh vs Mulkh Raj decided on 25.07.2019 relating to the shop in question, wherein the tenant had sought indulgence of instalments and extension of time to deposit the rent of Rs. 1,08,000/- and this Court allowed the respondent-tenant to make payment of arrears of rent as proposed by him.

9. Learned counsel for the petitioner further argues that the learned Appellate Authority has further committed a grave error in returning the finding on the basis that neither in the sale-deed dated 20.11.2000 (Ex.A14) when the property was purchased by Bimla Rani from its earlier owner nor in the sale-

deed dated 13.07.2009 (Ex.A1), when the property in dispute was further sold by Bimla Rani to petitioner Mulkh Raj, the name of respondent – Sukhdev Singh is shown to be in possession of demised shop as tenant. He submits that there is no requirement in law to describe the tenancy as a recital in the sale-deed. The tenancy can be oral. Moreover, respondent Sukhdev Singh has failed to prove that he is in possession of the shop in question as owner, which was his pleaded case. Further when he stepped into the witness box as RW1, he admitted that he does not have any document to prove that he is in possession of the shop in question as owner. Rather in his cross-examination he minced no words to admit that property No.60-61 was sold by Bimla Rani to Mulkh Raj.

10. Learned counsel for the petitioner further submits that the arrears of rent ought to have been awarded with effect from the date it was claimed i.e. 17.03.2009, instead of restricting the same to past three years.

11. Per contra, learned counsel for the respondent-tenant submits that the petitioner has filed the ejectment application on flimsy grounds. The petitioner is neither owner of the shop nor landlord of the respondent. The learned Appellate Authority has rightly allowed the appeal filed by him while reversing the findings recorded by learned Rent Controller and dismissing the ejectment application being not maintainable. The prayer is for upholding the findings recorded by the learned Appellate Authority.

12. Heard learned counsel for the parties and perused the paper-book and relevant referred record.

13. The core issue in hand is whether the petitioner is a landlord of the respondent or not. To prove jural relationship of landlord and tenant, petitioner examined himself as AW-1. He deposed that based on sale-deed dated 13.07.2009 (Ex.A1) he is owner of shop in question and the respondent is his tenant. The petitioner also examined Kamal Kumar AW-2, who had purchased

the shop in question along with the petitioner. In his affidavit (Ex.AW2/A) Kamal Kumar deposed that he along with Mulkh Raj had purchased the property no. 60-61 from Smt. Bimla Rani vide registered sale-deed dated 13.07.2009. At that time the respondent was tenant in the shop. AW-2 Kamal Kumar further stated that he has withdrawn from the ownership of the property in question by taking price of his share. Petitioner Mulkh Raj and AW-2 Kamal Kumar were cross-examined at length. Nothing favorable to the respondent has come forth to suggest or to believe that the respondent is the owner, as is his case. The respondent though tried to establish that he had constructed the shop in the year 1992-93 with his own funds, but he has not produced any documentary evidence to prove his ownership.

14. In this connection, it is pertinent to reproduce hereunder the relevant parts of the ejectment order dated 27.04.2018 passed by the learned Rent Controller and the impugned order dated 25.02.2021 passed by the learned Appellate Authority:

Ejectment order dated 27.04.2018 passed by the learned Rent Controller:

“20.....xxxxxxx Then to prove that the demised premises was actually rented out to the respondent by his previous landlady Bimla Rani, applicant has placed on file house tax receipts Ex. A-13 and Ex. A-14. Perusal of the same reveals that earlier vendor of the demised property has been recorded in the column of ownership against property no. 60-61, whereas in the column of occupier, respondent Sukhdev Singh has been shown to be tenant at the rate of Rs. 200/- per month.”

Impugned order dated 25.02.2021 passed by the learned Appellate Authority:

“39. At this stage learned counsel for the landlord has relied upon the assessment tax register issued by the authority in another case decided between Mulkh Raj and another tenant namely Anthoni, wherein the name of Sukhdev Singh has also been mentioned as tenant in the demised shop. To support his argument, he has drawn attention of this court towards documents Ex. A-17 to Ex. A-20.”

15. As stated in para 13 of the impugned order dated 25.02.2021, Ex. A-17 is copy of statement of Bhanu Pal while Ex- A-18 to Ex. A-20 are the

Assessment lists of house tax. House tax receipts and Assessment lists of house

tax referred to above were issued by public officers in due course of official business. They seem to have considerable evidentiary value, though by themselves they might not have been sufficient to prove the tenancy of Sukhdev Singh under the previous owner in the absence of any further evidence of his tenancy. In present case, observations/ discussion in the order passed by the learned Rent Controller show that the petitioner and AW Kamal Kumar both had deposed that Sukhdev Singh was a tenant in the demised premises under its previous owner Bimla Devi, at the time of its purchase by them from her and that their testimony in this behalf could not be shaken in cross examination.

16. Further, the respondent has himself, though without admitting to be the tenant of the petitioner, in Civil Revision No. 3937 of 2019 before this court, titled as Sukhdev Singh vs Mulkh Raj, decided on 25.07.2019, relating to the shop in question sought time and indulgence to pay the arrears of rent amounting to Rs. 1,08,000/- in two equal instalments. This Court allowed the respondent-tenant to make payment of arrears of rent, as proposed by him.

17. In any case, proof of relationship of landlord and tenant is not a matter of presumption. There must be positive evidence to prove the same. Petitioner has proved his ownership by adducing oral and documentary evidence, whereas the respondent could not prove that he is the owner, as claimed by him.

18. Learned Rent Controller held that the petitioner had proved his ownership of the demised premises by adducing oral and documentary evidence, whereas the respondent could not prove that he is the owner as claimed by him. Learned Appellate Authority did not take any contrary view in this behalf. The respondent, however, denied the tenancy. It was, therefore, incumbent upon him to show in what other capacity he was occupying the premises in question, if not as tenant. No answer to this question is forthcoming on record.

19. In these circumstances, to my mind, the learned Rent Controller rightly accepted the petitioner's version that Sukhdev Singh was a tenant under previous owner Bimla Devi and discarded the bald statement of Sukhdev Singh denying his tenancy. By operation of law, on purchase of the property by the petitioner and Kamal Kumar from Bimla Devi, the respondent became a tenant under them and later when Kamal Kumar transferred his share to the petitioner, the respondent became a tenant under the petitioner alone. In the facts and circumstances of the case, to my mind, the finding recorded by the learned Rent Controller on issue No. 3 seems to be in consonance with the material on record. In my opinion the learned Appellate Authority took an erroneous view of the evidence on record while reversing the said finding of the learned Rent Controller on issue No. 3. Accordingly, it is held that the respondent is a tenant under the petitioner, the finding to this effect recorded by the learned Controller is restored while the contrary finding recorded by the learned Appellate Authority is set aside.

20. Under the relevant provisions of the East Punjab Urban Rent Restriction Act, non-payment of arrears of rent only furnishes a ground to the landlord for the tenant's eviction and in such case, the jurisdiction of the Rent Controller is limited to ordering the tenant's eviction. In present case, though the learned Rent Controller held that the tenant was in arrears of rent to the tune of Rs.1,08,000/-, yet this was not made a ground for the tenant's eviction. Rather, his eviction was ordered on several other grounds. Thus, in present case, the said finding about the quantum of arrears of rent is now only of abstract academic interest.

21. The memo of appeal filed by the landlord before the learned Appellate Authority has not been filed with the instant Revision Petition. Even otherwise, the present petition does not show whether or not the petitioner had challenged

the finding of the learned Rent Controller on the aspect of quantum of arrears of rent in his appeal before the learned Appellate Authority. Unless the finding recorded by the learned Rent Controller on the quantum of arrears of rent had been challenged in the petitioner's appeal before the Appellate Authority, he would be precluded from raising that plea in the instant Revision petition.

22. In these facts and circumstances, I am unable to accept the contention on behalf of the petitioner that the learned Rent Controller ought to have calculated the arrears of rent from 17.03.2009 and not restricted the same to three years preceding the filing of ejectment petition.

23. In para 16 of the order dated 27.04.2018, the learned Rent Controller observed/held as under:

“16. Xxxxxx Thus, it is held that the applicant is the landlord of the respondent who is in possession of the demised premises as tenant. The respondent has intentionally denied his relationship with the applicant and such denial has amounted to forfeiture of the tenancy for which the respondent is liable to be evicted. To support the aforesaid view, this Court would like to refer to the ratio of case law cited as Sada Ram v. Gajjan Law Finder LPA No. 4 of 1964, wherein the Hon'ble Punjab & Haryana High Court has held that denial of landlord-tenant relationship by the tenant amounts to forfeiture of tenancy and it entitles the landlord to seek eviction of the tenant in the same petition. xxxxxxxxx”

24. This view taken by the learned Rent Controller seems to be in consonance with the facts of the case and the settled legal position.

25. Resultantly, the petition is allowed, impugned order/judgment dated 25.02.2021 rendered by the learned Appellant Authority is set aside and the ejectment order dated 27.04.2018 passed by the learned Rent Controller is restored. No order as to costs.

03.12.2021

VS

(Arun Monga)
Judge

Whether speaking/reasoned :

Yes/No

Whether reportable :

Yes/No