

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

277

CR-824-2022 (O&M)
Date of decision: 19.12.2022

Sunil Kumar

.....Petitioner

Versus

Manju Sanghi and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Munish Gupta, Advocate
for the petitioner.

Mr. Akshay Jindal, Advocate and
Mr. Vijayveer Singh, Advocate
for respondent No.1.

MANJARI NEHRU KAUL, J. (ORAL)

The petitioner-tenant (hereinafter referred to as 'the tenant') is impugning the concurrent findings recorded by the Rent Controller, Narnaul and the Appellate Authority, Narnaul vide which he was directed to hand over the vacant and peaceful possession of the demised premises (as detailed in para No.1 of the judgment of the Rent Controller dated 04.10.2016) to the landlady. The tenant has also challenged the order dated 09.09.2021 vide which his application for leading additional evidence was dismissed by the Appellate Authority.

Respondent No.1-landlady (hereinafter referred to as 'landlady') filed the eviction petition under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (for short, 'the Act') on the following grounds:-

- (i) that tenant Sunil Kumar had not tendered arrears of rent from 01.04.2012 to 30.09.2013 despite repeated requests.
- (ii) that the floor and walls of the demised premises

were damaged by the tenant thereby diminishing its value and utility.

(iii) that the demised premises was sublet by the tenant to respondent No.2 without obtaining permission of the landlady or intimating her, in violation of the terms of the rent deed.

(iv) that the demised premises was required by the landlady for her personal necessity to run a business therein.

On being put to notice, the tenant appeared and filed his written reply wherein a preliminary objection qua maintainability of the petition was taken. It was averred therein that the tenant had never refused to pay rent to the landlady, however, it was she herself who had refused to accept the rent since she wanted the tenant and respondent No.2 to be evicted from the demised premises. The tenant further denied that he had caused any damage to the demised premises or had sublet the same to respondent No.2. It was rather submitted that respondent No.2 was not a sub-tenant but was his employee.

Respondent No.2 in his written reply also denied that the landlady required the demised premises for her personal necessity. It was submitted that the landlady was living in a joint family and still further her husband and other relatives had well established businesses. Thus, there was no requirement as pleaded by the landlady to run her business in the demised premises. Respondent No.2 also denied that he had been sublet the demised premises where he was now running a garment shop.

Upon consideration of the material and other evidence led, the learned Rent Controller concluded that the tenant had sublet the demised premises to respondent No.2 without the permission and consent of the landlady. It was further held that the requirement of the landlady was genuine. Accordingly, the tenant and respondent No.2 were ordered to be evicted from the demised premises. The appeal preferred to impugn the judgment and decree of the Rent Controller was dismissed by the Appellate Authority. Hence, the instant revision petition against the concurrent findings of both the Courts below.

Learned counsel appearing for the tenant vehemently submits that the impugned orders are patently erroneous as they have been passed without appreciating the evidence in their right perspective. He submits that the Courts below failed to appreciate that the landlady during her cross-examination had admitted being aware of respondent No.2 being an employee of the tenant. Therefore, the finding qua subletting of the demised premises on the face of it was erroneous and deserved to be set aside. He further submits that during pendency of the appeal before the Appellate Authority, the tenant had moved an application for additional evidence (Annexure P-3) for placing on record his Income Tax Returns for the relevant period which had been erroneously dismissed. Learned counsel while inviting the attention of this Court to the Income Tax Returns which have been annexed with the petition submits that a perusal of the profit and loss statements appended with them shows that for the period from 01.04.2013 to 31.03.2014, the tenant paid a sum of Rs.72,000/- towards salary. Similarly, another amount of Rs.78,000/- was paid by the tenant

towards salary for the period between 01.04.2014 to 31.03.2015. He submits that on a conjoint reading of the abovesaid statements along with the deposition of respondent No.2, case of the tenant stands duly corroborated that respondent No.2 was in fact his employee and was being paid a fixed monthly salary.

Learned counsel further submits that as far as the demised premises being required by the landlady for her personal necessity is concerned, there is a categoric admission of the landlady in her cross-examination to the effect that her husband is a man of means, therefore, it fails to appeal to prudence and cannot be digested as to why she would still need the demised premises to run her own business. Learned counsel still further submits that the landlady did not even file any replication to controvert the averments of the tenant in his written reply wherein it was categorically submitted that the landlady was running various businesses with her husband. He further submits that in the circumstances, it would amount to an admission on the part of the landlady that she was indeed running various businesses alongwith her husband.

Still further, learned counsel submits that the landlady in her cross-examination stated that she was not running any other business, however, the said fact stands belied from her Income Tax Returns which the tenant is seeking to adduce by way of additional evidence, wherein her income from other businesses stands reflected. In support, learned counsel has placed reliance upon ***Adil Jamshed Frenchman (D) by LRs Vs. Sardar Dastur Schools Trust and others : 2005(1) RCR (Rent) 284; Ravi Chand Mangla and others Vs.***

Lakshmi Narain : 1985(2) RCR (Rent) 463; Amarjit Singh Vs. Baldev Singh and another : 2009(2) RCR (Rent) 507 and CR No.4789 of 2015 titled as 'Chhote Lal Vs. Sukhi Ram' decided on 05.04.2022.

Per contra, learned counsel appearing for the landlady while vehemently controverting the submissions made by the counsel opposite, contends that the impugned orders do not suffer from any illegality and being in accordance with law deserve to be affirmed. Learned counsel submits that the documents sought to be produced by way of additional evidence were already in the possession of the tenant when the proceedings were pending before learned Rent Controller, however, he failed to place them on record, hence, the Appellate Authority was justified in dismissing his application for additional evidence. He further submits that even if for the sake of arguments, the statements of profit and loss of tenant are considered, his case would still fail as in his deposition he had categorically deposed that respondent No.2 was being given salary as per the sale of articles every month. Therefore, there was no question of any fixed salary being given by the tenant to respondent No.2 as was being tried to be projected by learned counsel for the tenant. He further submits that the entire cross-examination of the landlady had been conducted qua the businesses being run by her husband and other relatives of her husband which to say the least would be inconsequential. Learned counsel vehemently submits that merely because husband of the landlady is running various businesses, it cannot be a ground to deprive the landlady of an opportunity to run her own business moreso, when it was also a matter of record, that earlier also she was running her own cloth shop. Learned

counsel has lastly argued that admittedly no evidence at all was led to show that the landlady was running any other independent business of her own or that she was in possession of any other suitable property to run her business within the urban area concerned. In support, learned counsel has placed reliance upon ***Raj Kumar Vs. Jaimal Singh : 2018(4) Law Herald 3091; Varinder Singh and another Vs. Surinder Kaur : 2020(1) RCR (Rent) 265; Janta Transport through its partner Vs. Amarjeet Singh and others : 2016(5) RCR (Civil) 1010; Sunil Parshad Vs. Vishwa Mitter and others : 2020(2) RCR (Rent) 551; Ganga Devi Vs. Bhagwan Dass and others : 2014(47) RCR (Civil) 37; Kastur Chand Vs. Gujjar Mal and others : 1977(2) RCR (Rent) 436; Dr. S.S. Mann Vs. A.K. Sharma 2013(4) RCR (Civil) 1054; Arjun Dass Vs. Birinder Kaur and another : 2013(3) RCR (Civil) 156 and Kala Wati Vs. Ram Piari and others.***

I have heard learned counsel and perused the relevant material on record.

Before proceeding further, it would be relevant to underline the scope of the revisional jurisdiction of this Court to interfere with the concurrent findings of fact recorded by the Courts below. The Hon'ble Supreme Court, in '***Hindustan Petroleum Corp. Ltd. vs. Dilbahar Singh***' 2014 (9) SCC 78, has held that High Court should loathe to interfere with the findings of fact unless and until such findings are blatantly perverse or would result in gross miscarriage of justice if they are sustained. It would be apposite to reproduce the relevant observations and findings of the Hon'ble Apex Court in ***Hindustan Petroleum Corp.'s case (supra):-***

“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 as to 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.”

Adverting to the instant case, this Court finds no merit in the submissions made by the learned counsel for the tenant. It would be relevant to point out that a landlord/landlady is a stranger to an agreement of subletting between the tenant and sub lessee, therefore, it cannot be expected of him/her to lead any direct evidence to prove the factum of sub-lease. Hence, it would be open for such a landlord/landlady to rely upon attending circumstances in support of his/her plea of subletting. To controvert the ground of subletting, the tenant in his written reply had submitted that respondent No.2 was his employee. During the course of his examination, the tenant deposed

that he was paying salary to respondent No.2 as per the sale of articles. Thus, in the circumstances, it is obvious that no fixed salary was being paid to respondent No.2 and it varied from month to month, depending on the sale of articles. However, respondent No.2 during his deposition before the Rent Controller deposed to the contrary that he was paid fixed salary Rs.5,000/- per month for the year 2012-13; Rs.6,000/- per month for the year 2013-14; a sum of Rs.6,500/- per month for the year 2014-15 and in the year 2016 he was paid Rs.7,500/- per month. The aforesaid material contradictions coupled with the fact that no salary statement or any other record was produced indeed creates a big dent in the case of the tenant. Furthermore, the additional evidence sought to be led by the tenant to place on record his Income Tax Returns for the relevant period along with statements of profit and loss, in fact, as has also rightly been pointed out by the learned counsel for the landlady also, contradicts his own deposition qua respondent No.2 being paid salary as per the sale of articles. In these circumstances, since the tenant failed to prove the employment of respondent No.2, the Courts below rightly drew an inference that respondent No.2 was in possession of demised premises as a sub lessee.

Coming next to the ground of personal necessity of the landlady, it was specifically stated by her in her deposition that she required the demised premises for running her own business as there was no other suitable commercial place to run the business. It was further deposed by her and which fact has not been disputed by the tenant also, that the landlady was Proprietor of Haryana Traders, Narnaul and was having Indenting Agency of Raasthan Spinning &

Weaving Mill at Gulabpura. The work of the said firm was being carried out from a room situated on the first floor of Sanghi Emporium, Bridge Market at Narnaul. However, the said business was shut down in the year 2009 due to paucity of commercial space with her. The landlady was subjected to a lengthy cross-examination, however, the tenant was unable to elicit anything adverse so as to demolish her case. The tenant also failed to bring forth any evidence to show that the landlady was in possession of any other non-residential building, where she was running her business, at the time of institution of the rent petition.

It needs to be observed that a landlady cannot be prevented from running her own business even if her husband is a man of means and he along with his other relatives is running a number of businesses. The tenant cannot put a cap on the ambitions of the landlord/landlady and the discretion rests solely on the landlord/landlady as to whether he/she wants to run a business or not. It also needs to be emphasized that the landlord/landlady is the best judge of his/her requirements and cannot certainly be dictated by a tenant as to how, where and in what manner he/she should or should not start his/her business. The landlady has duly met the statutory requirements, and the necessity pleaded by her comes across to be bonafide and genuine much less a mere wish, or even an excuse to evict the tenant and respondent No.2 from the demised premises. Therefore, this Court has no hesitation in observing that both the Courts below have not committed any error and their findings are based on due appreciation of the evidence led.

This Court also does not find any substance in the

arguments raised by the learned counsel for the tenant that since the landlady had failed to file replication, the submissions made in the written reply filed by the tenant would thus be deemed to be admitted by her. The Hon'ble Supreme Court in ***K. Laxmanan Vs. Thekkayil Padmini : 2009(1) RCR (Civil) 389***, has held as under:-

“31. Pleadings as we understand under the Civil Procedure Code (for short the "Code") and as is defined under the provision of Rule 1 Order 6 of the Code consist only of a plaint and a written statement. The respondents/plaintiff could have filed a replication in respect to the plea raised in the written statement, which if allowed by the court would have become the part of the pleadings, but mere non filing of a replication does not and could not mean that there has been admission of the facts pleaded in the written statement....”

Coming next to the application filed by the tenant for adducing additional evidence before the Appellate Authority, this Court has no hesitation in holding that the Appellate Authority did not err while dismissing it. As already observed hereinabove, the Income Tax Returns as well as the statements of profit and loss of the tenant do not support his case in any manner. Even otherwise, the said material was already in the possession of the tenant and nothing prevented him from placing the same on record during the course of proceedings before the Rent Controller. Still further, had the tenant exercised due diligence he could have summoned the records of the Income Tax Returns of the landlady, from the concerned department, during the proceedings before the Rent Controller, however he failed to do so. Therefore, in view of the above, even the case laws relied upon by the learned counsel for the tenant would not come to his rescue.

As a sequel to the above, this Court does not find any illegality or irregularity in the concurrent findings recorded by the

Courts below. Accordingly, the instant revision petition being devoid of any merit is dismissed.

19.12.2022

(MANJARI NEHRU KAUL)

Vinay

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No