

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

CR No.282 of 2014 (O&M)
Reserved on 26.07.2022
Date of decision: 28.07.2022

Shri Jainendra Gurukul Panchkula through its Secretary

....Petitioner

Versus

Dev Raj

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Adarsh Jain, Advocate
for the appellant.

None for the respondent.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this revision petition is for setting-aside the order dated 24.10.2013 passed by the Lower Appellate Court vide which the findings recorded by the Rent Controller on Issue No.2 were reversed and the eviction petition filed by the petitioner/landlord was allowed by the Rent Controller was dismissed.

Brief facts of the case are that the petitioner/landlord filed a petition under Section 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1973, on the ground that the respondent is in possession of House No.L-6 situated in Shri Jainendra Gurukul premises, Sector 1, Old Panchkula, District Panchkula (hereinafter referred to as 'the premises in dispute') on a monthly rent of Rs.100/- per month and is liable to be evicted on the following grounds:-

a) Arrears of rent;

b) The premises is required for the personal requirement of

the petitioner as the accommodation, which is 25 years old, has outlived its life, is required for the personal necessity of the petitioner as a degree college with hostel, classroom, staff, accommodation needs to be constructed for the students.

The respondent/tenant contested the suit on various grounds including the plea that the petitioner/landlord earlier filed a rent petition No.14 of 2004, which was decided on 08.06.2007 and therefore, the present petition is barred by *res judicata* under Section 11 of Code of Civil Procedure.

The Rent Controller framed the following Issues:-

1. *Whether the petitioner is entitled for eviction of the respondent on the ground as mentioned in the petition? OPP.*
2. *Whether the present petition is maintainable in the present form and plaintiff has no locus standi to file the present petition? OPR.*
3. *Whether there is no relation of landlord and tenant between the parties? OPR.*
4. *Whether the plaintiff has come to the court with clean hands and has concealed the true and material facts from the court? OPR.*
5. *Whether the present petition is barred by jurisdiction? OPR.*
6. *Relief.*

Thereafter, both the parties led their respective evidence and the Rent Controller vide judgment dated 14.05.2012 held that as per the minutes of meeting of the Managing Committee of the petitioner, it is decided to demolish the existing building and construct a new degree college alongwith the buildings required for hostel

accommodation, etc.

It is also noted that though, at one point of time, the land was acquired by the Government but it was released later on and the possession throughout remained with the petitioner/landlord.

Accordingly, the Rent Controller decided Issues No.1 and 3 in favour of the petitioner that the petitioner/landlord is entitled for eviction of the respondent.

Under Issue No.2, regarding the maintainability of the petition, it was held that the petition is not barred by the principle of *res judicata* as on appreciation of the earlier ejectment petition (Ex.P-8) and written statement (Ex.R-9) and on perusal of the judgment dated 08.06.2007 (Ex.R-1) a finding was recorded that the rent petition was dismissed for want of evidence as the petitioner failed to lead any evidence in the said case. It was held by the Rent Controller that the said judgment, which did not decide the *inter se* dispute between the parties is not binding and therefore, the principle of *res judicata* does not apply.

The respondent/tenant filed an appeal before the Lower Appellate Court and the Lower Appellate Court reversed the findings on Issue No.2 by making the following observations:-

“19. After hearing the learned counsel for the parties and after going through the case file it is observed that the present petition has been filed by the respondent-landlord which is a registered body duly registered under the Societies Registration Act, 1860 and when one of the persons, who has been authorised to file the present petition by a resolution Ex.P1 and there is no objection

from the other members of the society, he is fully competent to sign, file and verify the petitions to be filed in the court. As per Ex.P1 the powers have been given to Sh.V.K.Jain, the Secretary by the Executive Body of the respondent landlord in a meeting held on 27.10.2002 and by virtue of resolution no.12 passed by the Managing committee, Ramesh Chander was authorised to appear, act and conduct the cases connecting to the respondent-landlord. The same has signed on 08.02.2010 and placed on record as Ex.P2. The extract of the minutes of the meeting of the Managing Committee of the respondent-landlord held on 16.07.1995 Ex.P3 show that it has been resolved by the committee that since the educational campus is to be expanded, the tenants in the one room tenements, once constructed for refugee orphan boys on India's partition were rented out to people from time to time, needed to be vacated and demolished. The total proceedings of the committee Ex.P4 have also been placed on record wherein they have proposed various expansions and the proposed site plan Ex.P5 has also been placed on record. It is observed that the present petition has been filed by a duly authorised person and the court takes support from the case "United Bank of India vs Naresh Kumar and others" (supra).

20. The learned counsel for the appellant-tenant has raised an objection that the present petition was not maintainable as the respondent-landlord had earlier also filed a petition for ejectment. The grounds which were taken in the previous petition, copy of which is Ex.R1, was that the appellant-tenant who was a tenant under the respondent-landlord, was to be ejected as the premises was required as they required demolition of the buildings for construction of boarding houses, hostels, classrooms and college to impart higher education. The objection was

raised by the appellant in that petition that since the building in question had been acquired and compensation has been awarded, the respondent-landlord had no right over the property and many rooms were lying vacant where higher education can be imparted. After the framing of issues the respondent-landlord could not lead any evidence and the petition was dismissed under order 17 rule 3 of CPC.

21. The present petition has been filed for ejectment on the grounds that the appellant is in arrears of rent and want to expand the accommodation as the respondent-landlord is to start 10+2 classes in various streams and also to start Biology, Chemistry, Physics labs and want to raise a degree college, a hostel, classrooms and staff accommodation and the respondent-landlord needs the demised premises for personal use and necessity. The plea raised by the appellant is that the present petition is not maintainable and barred by the principle of resjudicata. He has referred to judgements on this issue and the case law which has been referred to by the learned counsel for the appellant-tenant are either on the ground of sub-tenancy or on the ground of relationship of landlord and tenant. In the present case, the earlier petition, which was filed against the appellant-tenant was on the grounds of personal necessity as the premises was required by the respondent-landlord for construction of boarding houses, hostels, classrooms and a college and in the present petition the need of the respondent-landlord has increased and the necessity includes the expansion of the building for starting classes of the level of 10+2, labs of Biology, Physics and Chemistry, a hostel, staff room and staff accommodation. The ground of bonafide necessity is the basis of both the petitions and there is no change in the bonafide necessity of the respondent-landlord and the

respondent-landlord has not disclosed the filing of the previous petition by them and the dismissal of the same under order 17 rule 3 of CPC and as per the settled law the second petition is barred by the principle of resjudicata and the respondent landlord has concealed the factum of previous petition from the court as nowhere in the petition they have disclosed this fact.

22. The question of relationship of landlord and tenant has been challenged by the appellant-tenant on the grounds that the land under the demised premises was acquired by HUDA and thus, when the respondent-landlord did not remain the owner, the relationship of landlord and tenant came to an end, but the testimony of RW1 shows that the land was returned to the respondent-landlord and when the land has been restored after releasing the same from acquisition, the relationship revives and it cannot be said that there is no relationship of landlord and tenant between the parties and this objection is rejected.

23. Regarding the other points raised by the appellant, it is observed that the respondent-landlord wants to start educational institutions in the land on which the demised premises is situated and for starting the educational institutions there is no need of permission from the Rent Controller, but the same may be required from the concerned/appropriate authority.

24. The person who has been authorised to appear in the present case, has appeared as a witness and proved the bonafide requirement of the respondent-landlord, but since the matter has already been decided previously in another petition filed by the respondent-landlord, the present petition is barred by the principles of resjudicata. Although no issue was framed by the learned Rent Controller on this point but an observation was given in

the order dated 29.01.2010 that the question of resjudicata is a question/fact of law and can be taken judicial notice. In view of this the findings on issue no.2 are reversed and the same is decided in favour of the appellant-tenant. Findings on the other issues remain the same.”

Accordingly, the eviction petition filed by the petitioner was dismissed.

This petition is pending since 2014 and with regard to some other eviction petition filed by the petitioner against the other similarly situated tenants where the eviction petition was filed by the Rent Controller, the tenant filed CR No.661 of 2014, which was decided on 29.10.2014, upholding the eviction of the tenants in those petitions.

Similarly, in CR No.3092 of 2014 and CR No.4633 of 2014, decided on 21.11.2014 by this Court, the eviction passed by the Courts below regarding the property of the petitioner - Gurukul was also upheld.

This Court on 27.02.2017, passed the following order, noticing the aforesaid facts:-

“Perusal of the record would go on to show that appellate authority has allowed the appeal on the ground of principle of res judicata when the ejectment was sought on the requirement of bona fide necessity. The said reasoning is apparently, not justified. As per settled principle, bona fide personal necessity can keep on varying and changing with circumstances, and a fresh petition can be filed.

Perusal of paper book also shows that in CR No.661 of 2014 and CR No.3092 of 2014 and CR No.4633 of 2014

have been allowed in favour of the landlord for setting up a University in the premises in question. It is also not disputed that similarly situated tenants have taken time to vacate the premises by 31.12.2017 as per order passed in CR No.939 of 2017 on 21.02.2017.

Faced with this situation learned counsel for the respondent prays for time to seek necessary instructions.

To be listed in the urgent list on 27.03.2017.”

Again on 27.03.2017, the following order was passed by this Court:-

“Keeping in view the order passed on 27.02.2017, Mr.Singla submits that he has taken necessary instructions from the respondent that time be given to vacate the premises by 31.03.2018. He submits that necessary affidavit will, accordingly, be filed, on or before the next date of hearing.

List on 18.04.2017, for the said purpose.”

Thereafter, on 18.04.2017, the respondent - Dev Raj appeared in person and stated that he never engaged Mr. Y.P. Singla, Advocate and thereafter, nobody appeared for the respondent for a long time over a period of 05 years when this petition remained pending.

On 14.07.2022, noticing that the respondent though previously appeared through his counsel as well as in person but is not appearing for the last many years, fresh notice was issued to him with a direction to the Registry to inform the respondent - Dev Raj with a note on the summons that if he or his counsel will not appeared on the next date of hearing, the present petition will be decided in his absence.

Notice issued to the respondent - Dev Raj, received back duly served.

The Lower Court record was requisitioned.

Counsel for the petitioner has referred to the earlier petition (Ex.R-8) as well as the amended petition (Ex.R-10) filed by the petitioner against the respondent for construction of the building for personal necessity. A perusal of this petition show that the only ground taken in this petition was personal necessity and the ground of non-payment of rent was not a ground in the said petition.

A perusal of the written statement filed by the respondent in the earlier petition would show that it is stated that the requirement of the petitioner/landlord is not *bona fide*.

Counsel for the petitioner has, then, referred to the judgment dated 08.06.2007 (Annexure R-1), which was passed in the aforesaid rent petition No.14 of 2004 wherein while dismissing the petition, the following order was passed:-

“5. The petitioner availed five effective opportunities, but did not lead any evidence. Therefore, the opportunity to lead petitioner evidence was closed by court order.

6. As per the petitioner did not lead any evidence despite several opportunities, the petition stands dismissed for want of evidence. Memo of costs be prepared accordingly and file be consigned to the record room, after due compliance.”

Counsel for the petitioner has further submitted that the earlier petition was filed only on the ground of personal necessity whereas in the present case it is on 02 grounds i.e. personal necessity as well as non-payment of rent. It is also submitted that the earlier petition was dismissed on account of non-production of the petitioner's

evidence whereas in the instant case, the petitioner has led the evidence to prove both the grounds i.e. personal necessity as well as non-payment of rent.

Counsel for the petitioner has also submitted that the principle of *res judicata* will not apply in this case as the matter was never adjudicated on merits by the Courts as the petition was dismissed on account of the fact that the petitioner/landlord could not lead the evidence.

Counsel for the petitioner has relied upon the judgment "***N.R. Narayan Swamy vs B. Francis Jagan***", 2001(2) RCR (Rent) 169, passed by the Hon'ble Supreme Court, to submit that if a suit under the Rent Act is dismissed, the subsequent petition can be dismissed only if the issue in the subsequent petition is identical.

Counsel for the petitioner has also relied upon the judgment "***Srihari Hanumandas Totala vs Hemant Vithal Kamat and others***", 2021 (3) RCR (Civil) 768, wherein it has been held that the principle of *res judicata* will apply as under:-

"20. On a perusal of the above authorities, the guiding principles for deciding an application under Order 7 Rule 11(d) can be summarized as follows:

(i) To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to;

(ii) The defense made by the defendant in the suit must not be considered while deciding the merits of the application;

(iii) To determine whether a suit is barred by res judicata, it is necessary that (i) the 'previous suit' is

decided, (ii) the issues in the subsequent suit were directly and substantially in issue in the former suit; (iii) the former suit was between the same parties or parties through whom they claim, litigating under the same title; and (iv) that these issues were adjudicated and finally decided by a court competent to try the subsequent suit; and

(iv) Since an adjudication of the plea of res judicata requires consideration of the pleadings, issues and decision in the 'previous suit', such a plea will be beyond the scope of Order 7 Rule 11 (d), where only the statements in the plaint will have to be perused."

Counsel for the petitioner has also contended that since in the present case, there is an additional ground for non-payment of rent, therefore, provisions of Section 11 CPC will not apply.

There is no representation on behalf of the respondent despite fresh service effected upon him as his previous counsel after giving an undertaking to vacate the premises had not appeared and the respondent appeared in person, to submit that he has not engaged him as a counsel and in spite of fresh notice, nobody is present.

After hearing the learned counsel for the petitioner and perusal of the record, I find merit in the present petition for the following reasons:-

(a) The Rent Controller has rightly recorded findings under Issues No.1 and 3 that the requirement of the petitioner/landlord is bona fide and the respondent/tenant has failed to pay the arrears of rent.

(b) The trial Court has also recorded a correct finding on Issue No.2 that the principle of res judicata will not apply in this case as the fresh application is filed

on changed circumstances, which were non-existent and not pleaded in the previous case.

In the instant case, the petitioner has prayed for eviction on two grounds. Firstly, the premises is required for upgrading the building; and secondly, the tenant is a defaulter and had not paid the arrears of rent, whereas in the earlier petition there was only one requirement of bona fide necessity.

c) In view of the well settled principle of law as in N.R. Narayan Swamy's case (supra) and Srihari Hanumandas Totala's case (supra) and the fact that the earlier petition was not adjudicated upon on merits of the case as it was summarily dismissed as the petitioner failed to lead the evidence and therefore, the present petition, in which both the parties have led the evidence, the Lower Appellate Court fell in error in reversing the finding on Issue No.2 that the present petition is barred by principle of res judicata.

In view of what has been discussed hereinbefore, the present revision petition is allowed and the findings recorded by the Lower Appellate Court is set-aside and that of the trial Court is restored/upheld.

Since a period of 10 years has already elapsed when the judgment of the Rent Controller was passed on 14.05.2012, the respondent/tenant is directed to vacate the premises within a period of 02 months from the date of passing of this order.

(ARVIND SINGH SANGWAN)
JUDGE

28.07.2022

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No