

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

(1)

**CR-4042 of 2014 (O&M)
Date of decision: 10.11.2022**

Mool Chand

..Petitioner

Versus

Sanatam Dharam Sabha (Regd.)

..Respondent

(2)

CR-7290-2016 (O&M)

Ashwani Kumar

..Petitioner

Versus

Sanatam Dharam Sabha (Regd.)

..Respondent

(3)

CR-8699 of 2015 (O&M)

Sumitra Devi

..Petitioner

Versus

Sanatam Dharam Sabha (Regd.)

..Respondent

(4)

CR-3964 of 2016 (O&M)

Darshan Singh

..Petitioner

Versus

Sanatam Dharam Sabha (Regd.)

..Respondent

(5)

CR-5101 of 2015 (O&M)

Mohan Singh

..Petitioner

Versus

Sanatam Dharam Sabha (Regd.) & Ors.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vaibhav Sehgal, Advocate
for the petitioner.

Mr. Rahul Rampal, Advocate
for the petitioner (in CR-5101 of 2015)

Mr. Divanshu Jain, Advocate
for the petitioner (in CR-8699 of 2015)

Mr. Sham Lal Bhalla, Advocate
for the respondents.

ANIL KSHETARPAL, J(Oral)

1. A batch of 5 identical revision petitions has come up for final disposal. Though, the tenants are different, however, the landlord and the grounds on which ejectment has been sought, are common.

2. In 4 civil revision petitions, except Civil Revision No.7290 of 2016, (*Ashwani Kumar vs. Sanatam Dharam Sabha (Regd.)*) the points for consideration are also common.

3. Sh. Sanatan Dharam Sabha (Regd.), Ludhiana (hereinafter referred to as 'the Sabha'), is running Kamla Lohia College which is imparting education in undergraduate as well as post graduate courses.

4. The Society, through its President, filed various petitions against the different tenants on identical grounds. It was asserted that the building has become unfit and unsafe for human habitation being more than 70 years old and the tenanted premises are required for bonafide necessity of the Society as the exiting land available for running the college is insufficient. In some cases, the Rent Controller dismissed the petition on the ground that the President, who filed the petition on behalf of the Society, was not authorised. Whereas, in other petitions, ejectment was ordered. The

Appellate Authority has passed the order ejecting the petitioners (tenants) in all the cases. In Ashwani Kumar's case (Civil Revision No. 7290 of 2016) an additional argument has been raised with regard to maintainability of fresh petition under Order XXIII Rule 1(4) CPC.

5. This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book along with record which was requisitioned.

6. The learned counsels representing the petitioners contend that the petitions were filed in the year 2005 but there was no resolution in favour of the President of the Society authorizing him to file such petitions. They submit that the amendment of Rules and Regulations in the year 2012 authorizing the President would not operate retrospectively. Therefore, the petitions, as filed in the year 2005, were not, per se, maintainable. It is further submitted that since the petition was not maintainable on the date of filing of the petition, a right crystallized in favour of the tenants, therefore, the order of ejectment is liable to be set aside. It has further been pointed out that the Society has been registered by the Registrar, Joint Stock Companies, Punjab, Lahore, whereas, the Society should have been registered under the Societies Registration Act, 1860. It is further contended that the President produced a photocopy of the amended Rules and Regulations but the same was not admissible in evidence because their counsel objected to its admissibility.

7. It has also been brought to the notice of the court that in Civil Revision No.4042 of 2014 (**Mool Chand vs. Sanatan Dharam Sabha (Regd.)**), the petitioner has filed an application for bringing additional evidence under Order 41 Rule 27 CPC in order to prove that the Sabha,

itself, is encroaching upon the land.

8. Per contra, the learned counsel representing the Sabha contends that the amended Rules dispensed with the requirement of passing a distinct resolution in each case. It is admitted that such amendment is of procedural nature and therefore, it shall apply, retroactively even to the pending proceedings. The attention of the court has been drawn to Clause 16(A)(iv) of the amended rules which reads as under:-

“(iv) he shall take decision to institute or defend any legal proceedings. Further to sign and verify plans, written statement, applications, sworn affidavits, depose in Court, to engage an Advocate/Advocates, sign vakalatnama, pay counsel fee and other miscellaneous expenses and to do all others acts and deeds as he may deem proper in given circumstances to protect and watch the interest of the Sabha and its institutions. There is no necessity of any separate resolution to authorize the President to file or defend any legal proceedings. The President is competent to take the decision to file a suit or to protect the property of the Sabha.”

9. Let's first examine the application for permission to lead additional evidence.

10. Admittedly, the relationship of landlord and tenants is not in dispute. Hence, an order passed by the High Court or any subsequent inquiry into the matter would not adversely effect the maintainability of the petition, particularly when, in rent proceedings, the question of ownership is not required to be examined. For maintainability of the eviction petition, the

Court is required to see whether there is a relationship of landlord and tenant between the parties. The expression 'landlord and 'owner' are not synonymous. A person may be a landlord but he not, necessarily, required to be the owner of the premises. Hence, the application filed under Order 41 Rule 27 CPC does not advance the case of the petitioners.

11. Consequently, the same is dismissed.

12. The technical objections of the learned counsels representing the petitioners are required to be examined in the context of requirement of the Sabha which is serving the society by providing opportunity to the youth to obtain higher education. The Society is being run by certain individuals, however, the petition has been filed by the Society through its office bearer. It is noted here that the attention of the court has not been drawn to the Rules and Regulations of the Society prior to 2012. Moreover, the objection taken is hyper technical in nature. There is a well established concept of ratification of actions in such cases. The amended rules came into force during the pendency of the petition before the Rent Controller. In such circumstances, once the amended rules authorised the President to file such petitions, the same shall apply retroactively and the opinion formed by the Appellate Authority that such petitions are maintainable does not require interference.

13. The next argument of the learned counsels for the petitioners, in various petitions, is with regard to the admissibility of the photocopy of the amended Rules and Regulations.

14. The learned counsels has read in open court the cross-examination of the President, who entered the witness box. During the cross-examination, he was not even once called upon to produce the original

rules and regulations. The rules and regulations have been duly admitted in evidence as Ex.P1, though, subsequently, they were objected to by the learned counsels representing the tenants. The tenants have not produced any evidence to prove that the photocopy of the aforesaid rules and regulations is fake or manipulated. At the cost of repetition, even no such suggestion was given to the President while cross-examining him. Moreover, the proceedings under the East Punjab Urban Rent Restriction Act, 1949 are summary in nature. In these circumstances, at the stage of revision, this court does not find it appropriate to hold, for the first time, that the photocopy of the rules produced in evidence as Ex.P1 was not admissible in evidence. It may be noted here that before the court of Rent Controller, the aforesaid objection though was taken but was never pressed upon by the learned counsel representing the tenants.

15. Now let's shift our focus to Civil Revision No.7290 of 2016 (*Ashwani Kumar vs. Sanatam Dharam Sabha (Regd.)*)

16. It has been pointed out that the Sabha filed a previous petition in the year 2004 which was withdrawn in the year 2012 and a new petition was filed in 2013. However, the Sabha failed to disclose the fact of filing of the previous petition. It has further been pointed out that the petition filed in the year 2004 and this petition filed in the year 2013 are identically worded. In fact, no new or subsequent cause of action has been pleaded. The learned counsel representing the petitioner(s) relies upon a Division Bench judgment passed in *Mehtab Singh Advocate vs. Shri Tilak Raj Arora and another, 1988 (1) P.L.R., 269.*

17. On the other hand, the learned counsel representing the landlord (Sabha) contends that the subsequent petition was filed after a period of 9

years from the date of filing of the previous petition. The petition, in this particular case, was filed along with various other petitions filed against different tenants. He submits that the judgment passed by the Division Bench deals with the maintainability of a subsequent petition based upon the same cause of action. He submits that the cause of action in petition filed in 2013 is not same with the cause of action disclosed in the petition filed in the year 2004. Subsequently, by the year 2013, the bonafide requirement became more crucial particularly with the increase in admissions and overall growth of the college.

18. This court has considered the submission.

19. Order XXIII Rule 1(4) CPC provides that a subsequent suit shall not be maintainable on the same cause of action if the previous suit has been withdrawn without liberty to file a fresh one on the same cause of action. The Division Bench in *Mehtab Singh Advocate (supra)* has held that Order XXIII Rule 1(4) CPC shall also be applicable to the proceedings under the Rent Act. However, in the facts of the case, when the Sabha has sought the eviction of all its tenants from the shops on the ground of bonafide necessity, the petition, filed in this particular case, is required to be read in that context. It has also come on record that two civil revision petitions i.e. CR No.7273 of 2013 (*Santosh Kumari and others vs. Sanatan Dharam Sabha*) and CR-5594 of 2015 (*Gurcharanjit Singh vs. Sanatan Dharam Sabha (Regd.)*) filed by different tenants have been dismissed as withdrawn. It has further been pointed out that a large number of tenants have already surrendered the possession of the shops in their respective possession. In these circumstances, if the petition filed against Ashwani Kumar is held to be not maintainable on a mere technical objection, it

would stall the entire proposed project which the Sabha has been waiting to execute for the last 17 years.

20. Keeping in view the aforesaid facts, this Court does not find it appropriate to exercise its revisional jurisdiction in favour of the tenants (petitioners).

21. It is stressed here that the scope of interference by this Court in revisional jurisdiction is extremely limited in view of the 5 Judge Bench judgment in Hindustan Petroleum Corporation Ltd. vs. Dilbahar Singh(2014) 9 SCC 78.

22. With these observations, the revision petitions are dismissed.

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

November 10, 2022
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No