

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

CR No.3009 of 2022 (O&M)

Date of decision: 02.08.2022

Neeraj Malhotra

....Petitioner

Versus

Jaswant Singh

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Anil Kumar Sharma, Advocate
for the petitioner.

ARVIND SINGH SANGWAN J.

Prayer in this petition is for setting-aside the order dated 18.04.2022 passed by the Lower Appellate Court vide which the order dated 25.08.2021 passed by the Rent Controller, U.T., Chandigarh, allowing the application filed by the petitioner under Order 7 Rule 11 CPC, was allowed.

Brief facts of the case are that the respondent/landlord filed an eviction petition under Section 13 of the Punjab Urban Rent Restriction Act, 1949 (as amended upto date) (hereinafter referred to as 'the Act of 1949'), for eviction of the petitioner from the tenanted premises/house on the ground of non-payment of rent, change of user as well as personal necessity. The said rent petition was filed in the year 2018. The petitioner/tenant appeared and filed an application under Order 7 Rule 11(d) CPC for rejection of the petition on the ground that the petition is filed under the provisions of Section 13 of the Act of 1949, stands repealed and Section 75 of the Punjab Rent Act, 1995 (in

short 'the Act of 1995') provides that on commencement of the Act of 1995, the East Punjab Urban Rent Restriction Act, 1949 (Act No.3 of 1949), stands repealed. It is further provided that under Sub-Section (1) of the East Punjab Urban Rent Restriction Act, 1949, all cases and other proceedings in respect of the premises other than owned by a non-resident India, let out prior to the commencement of this Act shall be governed and disposed of in accordance with the provisions of the Act so repealed.

It was, thus, submitted by the petitioner/tenant that since the rent petition is filed under the repealed Act, the plaint is liable to be rejected.

The respondent/landlord filed reply and contested the same on the ground that due to inadvertent omission only in the heading of the petition, it is mentioned as under Section 13 of the Act of 1949 whereas the petition is filed under Section 20 of the Act of 1995 (as amended upto date). It was also submitted that all the grounds mentioned in the body of the eviction petition are formed on the basis of Section 20 of the Act of 1995, as amended upto date and while filing the written statement, no such plea was taken by the respondent/landlord.

It was also submitted that the application is filed only after the assessment of provisional rent in which the arrears are more than Rs.40.00 lacs and in order to avoid the liability, the application has been filed just to delay the proceedings.

The trial Court vide order dated 25.08.2021, allowed the

application holding that as per Section 1 and Section 75(1) of the Act of 1995, it is clear that w.e.f. 30.11.2013 coming into force the Act of 1995, the East Punjab Urban Rent Restriction Act, 1949, stands repealed and as per the proviso, no proceedings between the parties were pending on the date when the Act of 1995 came into existence, the respondent/landlord has erroneously filed the petition under the Act of 1949. The operative part of the order dated 25.08.2021, reads as under:-

“Hence, this Court is of the opinion that the alleged tenancy agreement between the parties is governed by the provisions of Punjab Rent Act, 1995 and not by the provisions of East Punjab Urban Rent Restriction Act, 1949. In such a scenario, present rent petition is barred by Section 75(1) of the Punjab Rent Act, 1995 and falls under clause (d) of Rule 11 of Order 7 of CPC.

Accordingly, the rent petition is rejected under Order 7 Rule 11(d) of CPC with liberty to file fresh one under the new Act.

Memo of cost be prepared accordingly. File be consigned to the record room, after due compliance.”

The respondent/landlord, thereafter, preferred an appeal under Section 52 of the Act of 1995, challenging the aforesaid order dated 25.08.2021, and one of the ground taken in the appeal was that since the provisional rent was not assessed, the respondent/landlord has filed a petition before this Court, in which on 28.07.2021, it was directed that the Rent Controller, will decide the application for provisional rent within a period of 01 month and only thereafter, the application under Order 7 Rule 11 CPC has been filed.

The Lower Appellate Court vide impugned order dated 18.04.2022, allowed the appeal filed by the respondent/landlord.

The operative part of the impugned order dated

18.04.2022, reads as under:-

“12. After giving thoughtful consideration to the rival submissions and on careful perusal of the record, this court is of the considered view that the instant appeal merits acceptance and the impugned order passed by the learned Rent Controller is not sustainable in the eyes of law.

From perusal of record it is revealed that the learned Rent Controller had allowed the application for rejection of petition filed by the respondent on the ground that the alleged tenancy agreement between the parties is governed by the provisions of Punjab Rent Act, 1995 and not by the provisions of East Punjab Urban Rent Restriction Act, 1949 and further held that the same is barred by Section 75(1) of the Punjab Rent Act, 1995. The appellant being aggrieved from the impugned order qua rejection of the petition filed by him under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 against respondent seeking his eviction from the House No. 1135, Sector-70, SAS Nagar, (Mohali) has filed the instant appeal. The only question involves in the present appeal as to whether the petition filed by the petitioner under the East Punjab Urban Rent Restriction Act, 1949 (old Rent Act), instead of the Punjab Rent Act, 1995 was maintainable or not.

No doubt, the petitioner has filed the petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 and the same has been repealed, but it is a settled proposition of law that mere wrong mentioning of the provision or the name of act applicable to a particular case shall not vitiate the entire case of a party and also would not affect on the merits of the case, as it is also well settled law that technicalities of law should not come in a way to impart the substantial justice. So, here in the present case, the petitioner/landlord has filed a petition for ejectment of the tenant/respondent, inter alia, on the ground of bonafide requirement change of user and arrears of rent and all these grounds are available in both the Rent Acts. Therefore, it is not a case where the Rent Controller did not have the jurisdiction to entertain and pass the eviction order. Hence, mere mentioning of wrong provisions of law would not oust the jurisdiction of Rent Controller, if the relief sought in the petition can be

granted otherwise under some other provisions of law. Further, if the Court was vested with the power to deal with the application and grant relief, only because the petition has been filed under a misconception quoting the wrong provisions of law, a party cannot be non suited. Further, it is well established that claim of the party cannot be denied only on the ground of misnomer, quoting wrong provisions, the Courts are required to see the pleadings and relief claimed by the parties. While dealing with the question of misnomer/quoting wrong provisions, the Hon'ble Apex Court in case of J.Kumaradasan Niar Vs. Iric Sohan 2009 (2) RCR (Civil) 258, has held that it is a well settled principle of law that mentioning of wrong provision or non mentioning of any provision of law, would by itself, be not sufficient to take away jurisdiction of the Court, if it is otherwise vested in it in law. While exercising its power, the Court will merely consider whether it has the source to exercise such power or not. So, in such circumstances, mere mentioning of the old Rent Act instead of new Rent Act, would not affect the merits of case of the landlord. Further, indisputably an application for amendment of the petition filed by the petitioner for amending the petition was pending then the learned Rent Controller should not have rejected the petition on the said ground without deciding the application for amendment filed by the petitioner on merits. As a result of above discussion, this Court is of the view that the impugned order is not sustainable and in case the same is allowed to stand, it would be result into mis-carriage of justice. Accordingly, the instant appeal is allowed, with no order as to costs. The impugned order is set aside. The matter is sent back to the learned trial Court to proceed further as per law. The parties are directed to appear before the learned trial Court through their counsels on 22.04.2022 for further proceedings. Trial court record alongwith copy of this judgment be returned and this appeal file be consigned to the Record Room.”

Counsel for the petitioner has argued that the Lower Appellate Court has wrongly held that mere mentioning of wrong provisions of the law does not oust the jurisdiction of the Rent Controller. It is also submitted that in the headnote, it is specifically

pleaded that the petition is filed under Section 13 of the Act of 1949, which stands repealed and therefore, the rent petition was rightly rejected by the trial Court as it was not filed under the Act of 1995.

Counsel for the petitioner has relied upon the judgment of this Court, passed in **CR No.5761 of 2015**, titled as ***“Randhir Singh vs Ranjodh Singh Mudhar and another”***, decided on 04.08.2017, to submit that in the said case, a rent petition was filed under Section 13 of the Act of 1949 and later on, the eviction order was passed by the Rent Controller and this Court held that since the Act of 1949 stands repealed, the Rent Controller was not justified in passing the order of eviction under the old Act.

After hearing the counsel for the parties and going through the eviction petition (Annexure P1) as well as the application for rejection of plaint and the reply filed by the respondent/landlord, I find no illegality in the impugned order dated 18.04.2022, passed by the Lower Appellate Court.

Except in the headnote, there is no reference to Section 13 of the Act of 1949. The grounds taken in Para 11(a) and 11(b) of the eviction petition shows that the same are in consonance with Section 20 of the Act of 1995 i.e. on the grounds of non-payment of rent; using the tenanted premises for a purpose for which it was let out; using the same for commercial purpose for renting as a P.G. in the residential building; carrying out activities which are prohibited under Section 45(3) of the Punjab Regional and Town and Planning and Development Act, 1995 and for committing activities, which are material impairment of value and utility of the building. The grounds of eviction as described in

Section 20 of the Act of 1995, though are identical to Section 13-B of the Act of 1949, however, a comparison of both Section 20 of the Act of 1995 and Section 13-B of the Act of 1949, shows that the grounds for eviction and the protection to the tenant against the eviction are more elaborately given in the Act of 1995 as compared to the Act of 1949 and therefore, a perusal of the eviction petition reveals that the same is drafted in consonance with the provisions of the Act of 1995 and thus, the Lower Appellate Court has rightly held that by mere mentioning the wrong provisions of the Act of 1949, in the headnote alone is not sufficient to reject the plaint.

A perusal of the judgment passed in ***Randhir Singh's case*** (*supra*) shows that it was noticed by this Court that the petition was filed, after coming into force of the Act of 1995 citing the grounds under Section 13-B of the said Act and eviction order was finally passed. However, the said judgment is not applicable to this case as the petition is still pending and it is candid case of the petitioner that only in the headnote, Section 13 of the Act of 1949 is mentioned though, the grounds taken in the body of the eviction petition are of Section 20 of the Act of 1995 and because of a bona fide mistake, the provisions of the Act of 1949, have been mentioned.

Even otherwise, it is well settled principle of law that mere mis-quoting of wrong provision or non-mentioning of any provision would itself be not sufficient to take away jurisdiction of the Court and therefore, the Lower Appellate Court has rightly held that the plaint is not liable to be rejected under Order 7 Rule 11 CPC.

Accordingly, the present petition, being devoid of merits,

is dismissed.

Considering the fact that the rent petition is pending since 2010 and the respondent/landlord is 80 years of age, who has even approached this Court even on an earlier occasion wherein the Co-ordinate Bench has directed the Rent Controller to decide the application for assessing the provisional rent within a period of 01 month and thus, it is directed that the Rent Controller will decide the main petition expeditiously preferably within a period of 06 months from today.

Disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

02.08.2022

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No