

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR 278/2023 (O&M)

Date of decision:17/01/2023

Mohd. Arshad

.....Petitioner.

Vs.

Mohd. Rizwan

.....Respondent

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Jai Bhagwan, Advocate for the petitioner.

Nidhi Gupta, J.

Prayer in this revision petition is for setting aside the order dated 6.12.2022 (Annexure P-7) passed by Ld. Rent Controller, Malerkotla whereby the application moved by the petitioner for correcting the already framed issue no.3 and for framing of additional issue has been dismissed.

Brief facts of the case are that the respondent filed an application u/s 13 of the East Punjab Urban Rent Restriction Act, 1949 (for short 'the Act') for eviction of the petitioner from the demised shop, as fully detailed in the head note of the application, on the grounds of bona fide necessity and non-payment of rent. During the pendency of the eviction petition, petitioner filed an application seeking correction of the already framed issue No.3 and for framing of additional issue. It is this application which has been dismissed by the Ld. Rent Controller, Malerkotla vide order dated 6.12.2022 (Annexure P-7), impugned in the present revision petition.

It is submitted by the learned counsel for the petitioner that the impugned order is *prima facie* unsustainable in view of the fact that respondent has no right, title or interest whatsoever in the demised shop and therefore, the petition filed by him u/s 13 of the Act is not maintainable. It is submitted that in these circumstances the petitioner had sought relief, as aforementioned. No other argument has been raised on behalf of the petitioner.

Heard Ld. Counsel.

Perusal of the record of the case shows that the respondent had filed eviction petition u/s 13 of the Act on 2.12.2019 and reply thereto was filed by the petitioner on 15.1.2020. The learned Rent Controller framed the following issues on 22.12.2020:

1. Whether respondent is liable to be evicted from the demised shop on the ground of personal necessity, as prayed for? OPA
2. Whether respondent is still in arrears of rent? OPA
3. Whether the present application is not maintainable? OPR
4. Whether applicant has concealed the true and material facts from the Hon'ble Court and has not come to the Court with clean hands? OPR
5. Relief.

Application dated 7.11.2022 (Annexure P-5) was filed by the petitioner wherein it was pleaded that the following additional issue be framed:

“Whether Tahir Halim, Rashid Halim, Arif Halim, Shahid Halim, all sons of Abdul Halimk and Suriya Begum daughter of Abdul Halim or now the petitioner were/is owner/landlord of the demised premises? OPA

And the already framed issue no.3 be corrected as follows: -

“Whether the present application is maintainable? OPA”

A perusal of reply (Annexure P-2) filed by the petitioner to the petition u/s 13 of the Act shows that it has been inter alia pleaded therein that the tenancy in question originated prior to the birth of the petitioner when the father of the petitioner had taken the demised premises on rent; and further in the year 1992 petitioner came into possession of the shop in question upon the death of his father.

On a specific query by this Court, learned counsel for the petitioner admitted that the petitioner has been continuously paying rent to the respondent since then. Moreover, it is the admitted case of the petitioner as discernible from the written statement Annexure P2 filed by him, wherein the petitioner has admitted that the tenancy originated when the father of the petitioner had taken the demised premises on rent, which tenancy had devolved upon the petitioner on the death of his father. In my view, the above submissions amount to not just admission of the landlord-tenant relationship between the parties but also amount to an admission regarding the ownership of the respondent over the demised premises.

Further perusal of the order dated 22.12.2020, whereby issues were framed, shows that issue regarding maintainability has already been framed in pursuance to the objection of the petitioner regarding maintainability raised by the petitioner in para 1 of ‘Additional Objections’ in his reply to the petition u/s 13 of the Act.

It is also relevant that the application for correcting the already framed issue no.3 and for framing of additional issue has been filed

by the petitioner almost two years after framing of the issues by the Id.
Rent Controller.

For the reasons stated above, I find no merit in this revision
petition, and the same is hereby dismissed.

However, nothing stated hereinabove, shall be construed as
an expression or opinion on the merits of the matter.

17/01/2023
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No