

CR-2812-2017

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

CR-2812-2017

Date of Decision : January 09, 2023

Shri Bal Kishan and another

... Petitioners

Versus

M/s Surbhi Vatika (P) Limited

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Lokesh Sinhal, Advocate for the petitioners.

Respondent ex parte.

DEEPAK GUPTA, J.

This revision petition under Section 15(6) of the Haryana Urban (Control of Rent and Eviction) act, 1973 { hereinafter referred as 'the Rent Act'}, is directed against the order dated 28.02.2017 passed by Ld. Appellate Authority, Faridabad, reversing the order dated 08.04.2016 of learned Rent Controller, Faridabad, whereby provisional rent had been assessed in .

2. According to the petitioners, they are owners of land and building comprised in khewat no.205/190, khata No.227, rect. No.34, killa No.24/1 (5-7) bearing No.FCA-241 situated in East Chawla Colony, Ballabgarh, District Faridabad, consisting of an ice plant & its office; and mushroom plant comprising of 4 big halls measuring 70' x 20' each at ground floor, four big halls of 60' x 20' each in basement and 5 rooms, latrine, bathroom, electricity room, generator set etc. along with boundary wall.

3. The mushroom farm along with all plant and machinery comprising of the big halls as stated above, in an area of 1 kanal, along

with 5 rooms for labourers/employees were let out to the respondent-tenant vide a registered rent deed dated 16.02.2015. Along with the mushroom farm, house measuring 160 Sq. yards was also let out at monthly rent of ₹86,000/-. As respondent stopped paying rent since May, 2015 besides the electricity and other charges, it compelled the petitioners to file ejectment petition under Section 13 of the Rent Act.

4. The respondent opposed the petition, though admitted the tenancy as well as the rate of rent. However, objections were raised by him that certain obligations were to be performed by the petitioners-landlords, which they had failed to do so.

5. On an application for assessment of the provisional rent, learned Rent Controller vide order dated 08.04.2016 found the respondent to be in arrears w.e.f. 01.05.2015 to 31.12.2015 @ ₹86,000/- per month and after adding interest and cost, total provisional rent was assessed to be ₹7,23,000/-, which was directed to be tendered on 22.04.2016.

6. The respondent-tenant filed appeal against the said order dated 08.04.2016, which was accepted by learned Appellate Authority vide impugned order dated 28.02.2017 by holding that agreement entered between the parties was not a simple lease agreement and rather, the first party i.e. landlords were required to provide perfect and running cooling system, assistance of operators on sharing basis, generator and other facilities as mentioned in the agreement and thus, it was a case of lease of the business to run the business of mushroom farming. It was also noticed that the respondent-tenant had already filed a suit for damages against the

petitioners-landlords for not providing the agreed facilities, due to which he had incurred day to day heavy losses and that arrears of rent if any, was a subject matter of previous suit for damages. After making these observations, the order of the Rent Controller assessing the provisional rent was set aside, thus dismissing the said application.

7. Assailing the above said order of the Appellate Authority by way of this revision, it is contended by learned counsel for the petitioners-landlords that learned Appellate Authority has acted with material irregularity and illegality while passing the impugned order, as he misread the lease deed, which clearly provided for the lease of the premises and not lease to run any business. The petitioners have referred to the various clauses of lease deed so as to contend that intention of the parties was only to lease out the property and that learned Appellate Authority has wrongly relied upon the judgments cited before him by the respondent-tenant, which in fact were not applicable to the facts of this case. Learned Appellate Court failed to appreciate the facts that respondent-tenant has not deposited any provisional rent. The dispute regarding to payment of rent could only have been decided after appreciating the evidence to be led by the parties but in the meantime, the respondent-tenant was duty bound to pay the provisionally assessed rent.

With these submissions, prayer is made for setting aside the order dated 28.02.2017.

8. Notice of motion was issued to the respondent-tenant but despite service in accordance with law, nobody appeared to represent him to contest the petition and so, he was proceeded against ex parte.

9. I have considered submissions of learned counsel for the petitioners-landlords and have perused the record.

10. Section 13 of the Rent Act provides various grounds, on which eviction of a tenant in possession of a building or a rented land can be sought. One of the grounds is non-payment of rent. However, what is material to notice is that eviction is to be sought from a building or a land. The term 'building' has been defined under Section 2(a) of the Rent Act to mean as under:-

2(a) "building" means any building or a part of building let for any purpose whether being actually used for that purpose or not, including any land, godowns, out-houses, gardens, lawns, wells or tanks appurtenant to such building or the furniture let therewith or any fittings affixed to or machinery installed in such building, but does not include a room in a hotel, hostel or boarding house;"

11. So, it is required to be seen that whether the lease agreement, admittedly executed between the parties was regarding a building, as contended by the petitioners-landlords; or was it a lease to run a business as was contended by the tenant and as held by the Appellate Authority.

12. To consider above question, various terms of the lease deed are required to be considered. As per the lease deed (Copy Annexure P-7) the first party i.e. landlord Bal Kishan and Tulsi Dass are owner of the land measuring 5 kanals 7 marlas of khewat No.205/190, khata No.227, rect No.34, Killa No.24/1 situated in Ballabgarh, District Faridabad. Out of this, mushroom farm had been constructed in 1 kanal 0 Marla of land. The said mushroom farm consists of 4 big halls of 70' x 20' each on the ground floor; and 4 big halls of 60' x 20' each in the basement. All these 8 big halls are meant for growing mushroom. Besides, there are 5 rooms for

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labourers and other officials, which are used by labourers of mushroom farm as well as ice factory. Apart from this, the mushroom farm consists of electricity and water connection, all the necessary machinery for cultivating mushroom and air conditioners. This property also consist of a house built on 160 Sq. yard of land. This mushroom farm and house consisting 160 Sq. yard is the subject matter of lease. It was agreed that house built in 160 Sq. yard consisting of one room and one big hall besides 5 rooms as mushroom compound, can be used for residential office and packing. It is specifically mentioned that all this lease property shall be referred as mushroom farm. Tenancy period was from 01.02.2015 to 31.01.2018. Agreed rent was of ₹86,000/- per month. There was a cooling plant and 180 KVA generator in the property installed by the first party and the same are used for mushroom farm as well as the ice factory of the first party i.e. landlords. It was agreed that both the parties shall share the responsibility to maintain the cooling plant and generator by making necessary repairs and other services. Both the parties shall use the said cooling plant and generator set jointly and that first party shall not separately charge for the same. The second party i.e. tenant did not have any concern with the ice factory. It was agreed further that the first party shall hand over the machinery and plant to the second party after making necessary repairs in the running condition. Air conditions shall be fully operational. In case, any fault occurs in the machineries, the second party will bear expenses up to ₹5,000/- and if expensive exceeds ₹5,000/-, then the same shall be borne by the first party. Second party gave an amount of ₹5,00,000/- as security by way of

a cheque. After expiry of the lease period, the second party had to hand over the leased property in perfect condition. The second party was given right to run the mushroom farm by the name of 'Delhi Mushroom Farms' or any other name. It is also mentioned in the lease deed that in the ice factory belonging to the first party, there are plant operators, who are paid salary of ₹12,000/- per operator. In case, said operators are used to operate the machines of ice factory as well as mushroom farms, then their salary shall be equally shared by both the parties. In case, the first party does not run the ice factory, then the entire salary of the operators shall be paid by the second party i.e. tenant; and during the period, when mushroom plant is not run, then expenses of the operators shall be borne by the first party i.e. landlords. Both the parties were also to jointly bear the expenses of oil and ammonia gas to be used in compressors.

13. As observed in *K. Venkayya v. Thammanna Peda Venkata Subbarao, AIR 1957 Andh Pra 619*, there is an immense variety of structures, which could be styled as buildings. However, it is not possible to say that every enclosure of brick, stone work or mud walls covered in by a roof irrespective of the purpose for which it is used and let, is a building within the meaning of the Rent Act.

14. In *Uttamchand vs S.M. Lalwani AIR 1965 SC 716*, Hon'ble Supreme Court was considering the provisions of Section 3 of the Madhya Pradesh Accommodation Control Act, 1955 (No. XXIII of 1955). It was held that it is required to determine the character of the lease to see as to what was the dominant intention of the parties in executing the document. It was observed as under:

“11. As we have already noticed, Section 3 (a) (y) (3) takes within the definition of accommodation any building or part of a building, including any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof. There can be no doubt that the fittings of the machinery in the present case cannot be said to be fittings which had been fixed for the more beneficial enjoyment of the building. The fittings to which Section 3(a) (y) (3) refers are obviously fittings made in the building to afford incidental amenities for the person occupying the building. That being so, it is clear that the fittings in question do not fall under Section 3(a) (y) (3). If the fittings in question had attracted the provisions of Section 3(a) (y) (3) there would have been no difficulty in holding that the lease is in respect of accommodation as defined by the said provision.

12. What then was the dominant intention of the parties when they entered into the present transaction? We have already set out the material terms of the lease and it seems to us plain that the dominant intention of the appellant in accepting the lease from the respondent was to use the building as a Dal Mill. It is true that the document purports to be a lease in respect of the Dal Mill building; but the said description is not decisive of the matter because even if the intention of the parties was to let out the Mill to the appellant, the building would still have to be described as the Dal Mill building. It is not a case where the subject-matter of the lease is the building and along with the leased building incidentally passes the fixture of the machinery in regard to the Mill; in truth, it is the Mill which is the subject-matter of the lease, and it was because the Mill was intended to be let out that the building had inevitably to be let out along with

the Mill. The fact that the appellant contends that the machinery which was transferred to him under the lease was found to be not very serviceable and that he had to bring in his own machinery, would not alter the character of the transaction. This is not a lease under which the appellant entered into possession for the purpose of residing in the building at all; this is a case where the appellant entered into the lease for the purpose of running the Dal Mill which was located in the building. It is obvious that a Mill of this kind will have to be located in some building or another, and so, the mere fact that the lease purports to be in respect of the building will not make it a lease in respect of an accommodation as defined by Section 3 (a) (y) (3). The fixtures described in the schedule to the lease are in no sense intended for the more beneficial enjoyment of the building. The fixtures are the primary object which the lease was intended to cover and the building in which the fixtures are located comes in incidentally.”

15. In ***Spun Casting & Engg. Co. Pvt. Ltd vs Dwijendra Lal Sinha (Dead)*** (2005) 6 SCC 265, Hon'ble Supreme Court referred to ***Uttam Chand's Case (supra)*** and held as under:

“This Court in Uttam Chand v. S.M. Lalwani, AIR 1965 SC 716 drawing a distinction between the lease of a building and the lease of a business held that what was protected under the Act was the lease of the building and not the lease of the business. The question before the Court was as to whether the lease created of Dal Mill building with fixed machinery in sound working condition was an 'accommodation' within the meaning of Section 3A of the Madhya Pradesh Accommodation Control Act, 1955. For determining the

nature of lease created the Court laid the test of 'dominant intention' of the parties while creating the lease which is to be gathered in each case by construing the terms of the lease deed. Construing the terms of the lease in the said case this Court came to the conclusion that the dominant intention of the parties was to create the lease of the business and not that of the building. It was held that since the lease created was of running the business, the same was not protected under the Act."

16. Following the aforesaid judgment, Hon'ble Supreme Court held in [Dwarka Prasad vs. Dwarka Das Saraf](#), **AIR 1975 SC 1758** that where a cinema theater equipped with projector and other fittings is let out, it would not be a lease of 'accommodation' as defined in [Section 2](#) (1) (d) of the U.P. (Temporary) Control of Rent and [Eviction Act](#), 1947. It was observed that, legislature intended to cover within the meaning of word 'accommodation,' premises simpliciter either for residential, commercial or industrial purposes but did not include the business accommodated in a building. Where the business itself was let out, the same would not fall within the meaning of the word 'accommodation' enjoying the protection of the [Rent Act](#). That the leasing of a lucrative cinema business could not be reduced to a mere tenancy of building covered within the scope of the definition of 'accommodation'.

17. In ***Spun Casting & Engg. Co. Pvt. Ltd's Case (supra)*** plaintiff-respondents contended that settlement was the business of iron casting foundry along with building and the machinery therein and not the premises within the meaning of West Bengal Premises Tenancy Act, 1956. Hon'ble Supreme Court after referring to the deed and construing

the terms thereof, held as under.

“It is evident from the terms of the settlement that the dominant intention of the parties was to create a lease for running the business of an iron casting foundry. It cannot be said that the settlement was in respect of the premises constituting 'premises tenancy' within the meaning of the Act. Tenancy was not being created of the premises to run a business it was to the contrary.”

18. No doubt, that Haryana Rent Act includes the words “or machinery installed in such building” within the definition of the term “building”, unlike Madhya Pradesh Accommodation Control Act, 1955 as was discussed in ***Uttam Chand's case (supra)***; or U.P. (temporary) Control of Rent and Eviction Act, 1947 as was discussed in ***Dwarka Prasad's case (supra)***; or West Bengal Premises Tenancy Act, 1956, as was discussed in ***Spun Casting & Engg. Co.(P) Ltd.'s case (supra)***, but still the said term ‘machinery’ used in the Haryana Rent Act is simply meant to facilitate the lease property for its beneficial enjoyment. It does not mean at all that if the machinery is installed in the premises to run any business, then the premises will come within the definition of building liable to be vacated under the provisions of the Rent Act.

19. In fact, as per the legal position explained in ***Uttam Chand's case (supra)***, ***Spun Casting & Engg. Co.(P) Ltd.'s case (supra)*** and ***Dwarka Prasad's case (supra)***, it is dominant intention of the parties, which is to be seen to interpret the terms of the agreement to arrive at a conclusion as to whether, it was a lease of a building or lease of the business.

20. In the present case, the numerous terms contained in the

agreement executed between the parties, as have been referred earlier, would clearly reveal that there are many liabilities, which are continuously to be fulfilled by the landlords-petitioners. It is the petitioners, who are required to maintain the cooling plant. It is for the petitioners to provide water and electricity and generator set. Responsibility to repair the machines beyond a certain amount is also upon the landlords-petitioners. The repair of the cooling plant and the generator is the joint responsibility of both the parties. The said cooling plant and generator set are used both for the ice factory of the petitioners as well as for the mushroom farm leased to the respondent-tenant. It is responsibility of the landlords-petitioners to keep the air conditioner system fully functional. The respondent-tenant was given liberty to name the firm of his business as Delhi Mushroom Farm or any other farm. All these terms and conditions would manifest the intention of the parties that it was lease of the business of the mushroom farm and not of a simple building.

21. In view of the aforesaid discussion, the impugned order passed by learned Appellate Authority, Faridabad, is hereby upheld. It has been rightly held that the demised property does not fall within the scope of Haryana Rent Act.

22. As such, present revision is hereby dismissed.

January 09, 2023

sarita

(DEEPAK GUPTA)

JUDGE

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