

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR-3077-2018 (O&M)

Date of decision: 15.03.2023

Baldev Raj

...Petitioner(s)

Vs.

Muni Lal

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Vipin Mahajan, Advocate for the petitioner.

Mr. Karan Chaudhary, Advocate for the respondent.

NIDHI GUPTA, J.

Present Revision Petition has been filed by the tenant seeking setting aside of impugned judgment dated 21.04.2018 passed by learned Appellate Authority, reversing judgment dated 02.11.2016 passed by learned Rent Controller, Gurdaspur, whereby application filed by respondent-landlord under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as "the Act") was dismissed.

2. Brief facts of the case are that respondent-landlord filed eviction application dated 26.03.2013 (Annexure P1) seeking eviction of petitioner from shop in question/demised shop, on grounds of non-payment of rent and personal necessity. Upon notice, petitioner appeared and filed written statement in which it was categorically pleaded by him that rent petition was liable to be dismissed on ground of concealment of material facts as respondent-landlord was in

possession of a shop which was situated at a distance of 15-20 feet away from the demised shop. It was further averred in the written statement that during the pendency of rent petition, respondent had sold the other shop vide sale deed dated 29.09.2014 (Exhibit R1/Annexure P2). Accordingly, learned Rent Controller vide judgment dated 02.11.2016 had dismissed respondent's rent petition.

3. Aggrieved of the said order, respondent preferred an appeal before learned Appellate Authority who vide impugned judgment dated 21.04.2018 set aside judgment dated 02.11.2016 passed by learned Rent Controller by holding that there is no concealment. Hence, present Revision Petition.

4. It is vehemently submitted by learned counsel for the petitioner that rent petition (Annexure P1) was filed by the respondent on 26.03.2013. However, perusal of eviction petition shows that respondent had intentionally not mentioned anything in regard to the other properties owned by him which were situated within municipal limits of Gurdaspur, nor had he mentioned other material particulars which were mandatory in an eviction application under Section 13 of the Act. It is further submitted that during pendency of the rent petition, respondent-landlord sold one shop measuring 160 square feet which was located just 15 feet away from the demised shop by way of registered sale deed dated 22.09.2014 (Exhibit R1/Annexure P2). Learned counsel further submits that this fact has not been denied by the respondent in his cross-examination and in fact, respondent has admitted sale of said shop which is 15-20 feet away from the demised

shop and also admitted his signatures on the said registered sale deed. It is submitted that accordingly, finding of the learned Appellate Authority that shop sold by the respondent-landlord was a joint property and therefore, it was not mandatory to mention particulars of joint properties in the eviction application, is totally perverse and misreading of evidence on record.

5. It is further submitted that there is no document on record whatsoever to show that shop sold by the respondent was a joint property. Even there is no whisper in the evidence of respondent-landlord that said shop was a joint property. Accordingly, finding of the learned Appellate Authority that shop sold by respondent-landlord on 22.09.2014 is a joint property is perverse and as a sole ground for reversing well reasoned judgment of learned Rent Controller does not stand scrutiny and therefore, impugned order deserves to be set aside.

6. It is further submitted that during pendency of the appeal, respondent-landlord had moved an application (Annexure P5) under Order 41 Rule 27 CPC for additional evidence. Upon notice, the petitioner had filed reply (Annexure P6) to said application. However, while passing impugned order and accepting appeal of respondent-landlord, learned Appellate Authority had not decided above said application. Accordingly, for this reason as well, impugned order deserves to be set aside as it is well settled law that application under Order 41 Rule 27 CPC has to be decided along with main case or prior thereto. In support of his contentions, learned counsel relies upon judgment of Hon'ble Supreme Court in ***Civil Appeal No.5781 of 2008***

titled as "Jatinder Singh & Another Vs. Mehar Singh & Others Law Finder Doc Id # 172446 and of this Court in RSA No.2840 of 2018 titled as "Joginder Pal Monga & Another Vs. Jasjit Singh" Law Finder Doc Id # 1739104 to submit that it is incumbent upon the learned Appellate Court to decide application for additional evidence.

7. It is submitted that it has come on record that son of respondent-landlord is doing business in a shop which is also owned by respondent. It is also on record that respondent is residing with his son and is also sitting in the shop of his son as and when his son is not available. Accordingly, bona fide personal requirement of respondent is not made out and therefore, impugned order deserves to be set aside.

8. In response, it is submitted by learned counsel for respondent that it has been categorically stated by respondent in his cross-examination that shop sold vide sale deed dated 22.09.2014 (Exhibit R1) is joint property. Learned counsel submits that the said shop sold vide Sale Deed Ex.R-1 was purchased by parents of respondent solely in name of respondent. On a specific Court query, the sale deed and signatures of the respondent on the same, are admitted by respondent.

9. No other argument is raised on behalf of the parties.

10. I have heard learned counsel for the parties.

11. Perusal of record established the following undisputed facts that Rent petition (Annexure P1) is filed by the respondent on 26.03.2013. Perusal of said rent petition shows that no mention therein

has been made of any second/other shop(s) owned and/or subsequently sold by the respondent. In fact, a perusal of Para 2(ii) shows that respondent has categorically averred therein that:

“The applicant is well bodied person and want to start his business especially of Books of which he has the experience. The shop in dispute is required to earn his livelihood in these days of high parties. After vacating the rented shop the applicant has no shop or business. The applicant has not vacated any such shop after the commencement of the Act. The applicant has no other such shop for his business within the Municipal limits of Gurdaspur, i.e. Urban area of Gurdaspur.” (Emphasis supplied)

12. Admittedly, second shop was sold by respondent vide sale deed dated 29.09.2014 (Exhibit R1/Annexure P2/T) for a total sale consideration of Rs.2,75,000/-. Perusal of said sale deed shows that respondent is sole vendor of the shop measuring 160 square feet and respondent has categorically stated in said sale deed that:

“I, Muni Lal Gupta son of Des Raj Gupta son of Mulakh Raj, r/o Molhalla Khajanchian, Sareen Wali Gali, Gurdaspur. That one shop along with roof situated at Mohalla Khanchian, Tehsil Gurdaspur measuring 160 sq. feet measuring as towards East/West: Bahian 16’x16’, North/South: Bahian 10’x10’ and bounded as towards East: Gali, West: Shop Rajinder Mahajan, North: Shop Rajesh Verma, South: Gali. This shop is owned by me as per ownership certificate issued by Tehsildar Gurdaspur. The shop is in my possession and without any encumbrance, the shop is not under mortgage, nor I have entered into agreement of sale with anyone. Now, I have sold the aforesaid shop to Sh.

Rakesh Kumar son of Sh. Prem Kumar son of Om Parkash, resident of Defence Colony, Railway Road, Gurdaspur and Sh. Anu Gandotra son of Sh. Jatinder Kumar” (Emphasis supplied)

13. It is therefore, clear that respondent was the sole vendor of second shop as he has categorically stated that *“This shop is owned by me as per ownership certificate issued by Tehsildar Gurdaspur.”* Thus, there is no question/mention of any joint ownership of the said shop.

14. Further, Petitioner in his written statement pointed out that respondent was owner in possession of other shop and therefore, bona fide personal necessity is not made out. Said submission of respondent has been noted by learned Rent Controller in Para 6 of order dated 02.11.2016 as follows:-

“6. It is further submitted that the applicant owns number of other shops, besides the shop of his son and property situated within Municipal Limits, Gurdaspur, which is sufficient to carry on business of toys and books....”

15. Even no rejoinder was filed by respondent to written statement filed by the petitioner before learned Rent Controller. However, despite the above said facts, Learned Appellate Authority has reversed judgment of learned Rent Controller. Reasons assigned by the Learned Appellate Authority for doing so, are as follows:-

“16. Now reverting to the material issue to adjudicate the controversy in question whether the demised premises are bonafide requirement of the petitioner. The petitioner Muni Lal as AW-1 has successfully proved that the demised

premises is his bonafide requirement. No doubt, as per the evidence of respondent Baldev Raj as RW-1 and that RW-2 Ashwani Kumar apart from the cross examination of petitioner, it has come on record that the present petitioner/landlord was having another shop apart from the demised shop which he has sold in the pendency of present rent petition before the learned Rent Controller vide sale deed Ex.R-1. Meaning thereby, the sole contention of the respondent is that the petitioner was having another shop apart from the demised shop and he concealed that in the present petition. Meaning thereby, the petitioner has not complied with the necessary ingredients of sub clause (b) and (c) of section 13 of the Rent Act. But for the another shop as sold by the petitioner vide sale deed Ex.R-1, it has also been got explained from the cross examination of petitioner that the said shop was the part and parcel of another property of the petitioner being joint with other family members. Not to disclose another property joint with other family members is not fatal to the present rent petition that the petitioner is guilty of the concealment of the material facts qua other property, especially another available shop to him in view of the settled proposition of law as referred in **Janta Transport through its partners's case (supra)**. Moreover, that fact has also been got cleared from the cross examination of RW-1 Ashwani Kumar which has been produced by respondent/tenant whereby he under the stress of cross examination has admitted the fact that the petitioner has other shops/property at Trimmo Road Gurdaspur, but that is joint with other family members. Accordingly, the plea of guilty of concealment of another property by the petitioner has been got demolished from the cross examination of RW-2 Ashwani Kumar.” (Emphasis supplied)

16. The above-mentioned cross-examination relied upon by the learned Appellate Authority is available as Annexure P3/T and relevant excerpt thereof is reproduced hereinbelow:-

"...I have also never purchased any property, nor I have sold any property. It is correct that I have one plot near Govt. College, but there are ten co-sharers, the same has been inherited by me from my ancestors, the area is 27/28 marla. The said area is little ahead of Govt. College and the front of the same is abutting the road. The shops have also constructed there, which are from the time of my parents, because of joint business I am not taking rent from those shops. I have not mentioned anything in the eviction application regarding those shops.

I know Anu Gandotra son of Jatinder Gandotra, but I have no link with him. Neither me, nor anyone sold any property to Anu Gandotra son of Jatinder Gandotra. It is correct that one shop which is 15/20 feet away from the shop in dispute has been sold by me to Anu Gandotra son of Jatinder Gandotra. Volunteered the said shop is of my parents, but I do not know when the said shop was sold. It is correct that the shop which I have sold to Anu Gandotra, the same has not been mentioned by me in the eviction application. I do not know for what sale consideration, the said shop was sold.

Further cross-examination deferred to produce some documents.

*RO & AC
Muni Lal
12.8.2015."*

*Sd/- Mohit Bansal
ACJ/SD/GSP/*

17. Respondent was recalled for further cross-examination on 24.09.2015, which is as follows:-

“AW-1 Muni Lal son of Des Raj, r/o Khajanchian Mohalla, Gurdaspur.

Recalled for further cross examination.

XXXXxx by Sh. Rahul Puri Advocate.

The sale deed of the shop, which I have sold to Anu Gangotra son of Jatinder Gandotra, r/o GT Road, Gurdaspur has not been brought by me in the court. I do not orally remember that sale deed was executed on 22.9.2014, the same is written on the sale deed. It is correct that I have executed sale deed in favour of Anu Gandotra son of Jatinder Gandotra for Rs.2,75,000/-. I do not know that I have sold the said shop to Rajesh Kumar son of Prem Kumar also along with Anu Gandotra. I identify my signatures on the sale deed dated 22.9.2014, the copy has been seen by me today in the court. The shop which has been sold by me is 15-20 feet away from the shop in dispute. It is correct that the shop in dispute and shops sold vide sale deed dated 22.9.2014 are on the Gali.”

18. It therefore, follows that the sole reason/ground on which learned Appellate Authority has allowed respondent's appeal is the above said cross-examination dated 12.08.2015 wherein there is a bald averment of respondent that *“...the said shop is of my parents, but I do not know when the said shop was sold....”* In my view, learned Appellate Authority is in grave error in ignoring remaining evidence/testimony/cross-examination of the respondent wherein he has clearly admitted that he has executed the sale deed Exhibit R1 in favour of purchaser Anu Gandotra; Respondent has identified his signatures on sale deed dated 22.09.2014; Respondent has admitted that the shop sold by respondent is 15/20 feet away from the shop in dispute; that joint property of the respondent is one plot near Government College in which

there are 10 co-sharers which has been inherited by respondent from his ancestors and area of which is 27/28marlas.

19. In view of the above admissions on part of respondent, the finding/conclusion of the learned Appellate Authority is factually incorrect, perverse and based on patent misreading of evidence on record. In my view, there is no evidence whatsoever on record to suggest that shop sold by respondent vide Exhibit R1 is joint property.

20. In this regard, reliance can be placed upon judgments of this Court in **CR-3261-2010 titled as "Jatinder Kaur Vs. S.K. Dhaliwal"** wherein it has been clearly held as follows:-

"East Punjab Urban Rent Restriction Act, 1949, Section 13(3) (ii) – Eviction for personal necessity of landlord – Pleadings for- Landlord must plead and prove that (a) he requires the premises for his own occupation, (b) he is not occupying another such building in the urban area concerned (c) he has not vacated such building without sufficient cause after commencement of the Act – Non pleading and disclosure of these facts would disentitled him from the relief – No excuse that the property available at the time of filing eviction petition was subsequently occupied by his/her spouse would cure the defect – Even the law that landlord is the best judge for his needs, would not be attracted in such a case where statutory requirement under Section 13 itself was not fulfilled and the petition would be liable to be dismissed – In the absence of pleadings required by Section 13, pleading legal grounds available for bona fide need would be lame excuses – Eviction order set aside."

21. The abovesaid view has been reiterated by this Court in **CR-1314-2005 titled as "Randhir Singh Rohilla Vs. Rajbir"; CR-3105-**

2013 titled as “Radhey Shyam Vs. Sumitra Devi” and CR-1141-2003 titled as “Pritam Singh Bakshi Vs. Mrs. Sukhdev Kaur & Others”

22. It is therefore, clear that mandatory requirements of Section 13 of the Act have not been complied with. Accordingly, for the reasons noted above, present Revision Petition is **allowed** and impugned order dated 21.4.2018 passed by learned Appellate Authority is set aside.

23. Pending application(s) if any also stand(s) disposed of.

15.03.2023

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No