

CR-4863-2014 (O & M)
Date of decision: 15.11.2023

SANJAY KUMAR & ANR

...PETITIONERS

V/S

JASPAL VERMA & ANR

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Pritam Singh Saini, Advocate for the petitioners.

Mr. Namit Gautam, Advocate for respondents.

HARKESH MANUJA J. (ORAL)

CM-15447-CII-2022

This is an application under Order 41 Rule 27 read with Section 151 CPC, filed on behalf of respondents/applicants seeking permission to lead additional evidence in the shape of sale deed dated 02.07.2020 with regard to shop No.168 and 169, Ward No.3, Municipal Council, Thanesar.

2. Learned counsel for the applicants/respondents submits that the predecessors-in-interest of the petitioners/non-applicants sought eviction of the applicants/respondents from the demise property i.e. shop No.167, Ward No.3, Municipal Council, Thanesar, on the grounds of arrears of rent, subletting and her own bona-fide need as well as that of her daughter-in-law, namely, Raj Bala. The eviction was ordered by Rent Controller vide judgment dated 09.08.2011, whereas the same was reversed by the Appellate Authority vide its judgment dated 12.04.2014.

3. Learned counsel for the applicants/respondents submits that during pendency of the present revision petition, the petitioners/non-applicants

who were impleaded as legal heirs of deceased landlady-Smt. Krishna Devi, sold two adjoining properties/shops bearing No.168 and 169, Ward No.3, Municipal Council, Thanesar vide registered sale deed dated 02.07.2020, which showed that the need set up in the eviction petition was neither genuine; nor bona-fide. In view thereof, learned counsel for the applicants/respondents submits that the document sought to be produced by way of additional evidence in the shape of Registered sale deed dated 02.07.2020 was relevant for the purpose of just and effective adjudication of the case in hand, having bearing upon the merits.

4. On the other hand, prayer made in the application was opposed by learned counsel for the petitioners/non-applicants, refers to the reply to the application wherein it was stated that property No.168 was in fact residential portion, whereas the adjoining shop existed only in property No.169/3 being occupied by other tenant Yashender Sharma. He also refers to the house tax assessment records attached with the reply in this regard. Learned counsel further points out that the residential portion was sold by the petitioners so as to purchase another bigger portion to fulfill the need of the family as both the brothers were major now and required it for their families.

5. I have heard learned counsel for the parties and gone through the contents of the application as well as reply filed thereto. In the given facts and circumstances, the cause of action in the present eviction proceedings needs to be seen as on the date of filing of the same, the subsequent events which have taken place after almost 12 years, the same cannot be considered to the disadvantage of the petitioner-landlady, who sought eviction on the ground of herself as well as for the purpose of setting up of a bangle shop by her widowed daughter-in-law in order to support the entire family including her

old aged mother-in-law besides three minor children. The passage of time primarily taken by the Court while adjudicating upon the eviction proceedings cannot be taken to be detrimental to the rights of the petitioners/landlords/non-applicants so as to deprive them of their entitlement to seek possession on the grounds available to them at the time of filing of eviction petition. Even otherwise, no one is to suffer for an act of Court. Moreover, the assessment register appended along with the reply clearly shows that property No.168/3 happened to be the residential portion and thus, any alienation made thereof could not be considered to cause prejudice to the rights of the petitioners/landlords who were admittedly seeking eviction of a shop bearing No.167/3.

6. In view of the discussion made hereinabove, the sale deed dated 02.07.2020 having no bearing on the merits of the controversy in the case in hand, is not relevant for the purposes of adjudication of the present revision petition and thus, the application stands dismissed being devoid of merits.

MAIN CASE

By way of present revision petition challenge has been made to judgment dated 12.04.2014 passed by the Appellate Authority, whereby an order of eviction dated 09.08.2011 passed by Rent Controller, in favour of the petitioner-landlady qua the shop in question bearing property No.167/3 has been set aside.

2. Briefly stating, claiming herself to be owner/landlady of the shop in dispute bearing property No.167 situated in Sabzi Mandi, Ward No.3, Opposite Government Girls Senior Secondary School, Chhota Bazar, Thanesar (hereinafter referred to as the 'demised premises'), Smt. Krishna Devi (deceased) filed an eviction petition against respondents *inter alia* on the

grounds of arrears of rent, subletting as well as her own bona-fide need and also of her daughter-in-law namely, Raj Bala, who on account of untimely demise of her husband Raj Kumar, intended to set up a bangle shop so as to earn her livelihood and support the family including three minor children. It was stated in the eviction petition that the adjoining shop situated towards south of the demised premises was in occupation of one Yashender Sharma being tenant paying rent @ Rs.1300/- per month being the source of earning for the family.

3. Upon notice, respondents appeared and filed their written statement opposing the prayer made by the original landlady Smt. Krishna Devi. It was also submitted that other properties bearing Nos.168/3 and 169/3 were also owned by the landlady, though not disclosed in the eviction petition and therefore, she was liable to be non-suited on account of concealment of material facts. The factum of one shop in possession of Yashender Sharma being tenant was also denied and rather it was pleaded that the same was in occupation of Rajbala only.

4. The Rent Controller vide judgment dated 09.08.2011 allowed the eviction petition filed at the instance of landlady Smt. Krishna Devi, holding the bona-fide need pleaded by her to be genuine, though non-suited her as regards the other pleas of subletting and arrears of rent.

5. Aggrieved thereof, the respondents filed first appeal. It may be noted here that during pendency of the first appeal, Smt. Krishna Devi (landlady) died on 07.08.2012, resulting into impleadment of her grandsons, namely, Sanjay Kumar and Munish Kumar i.e. the present petitioners to be her successors/legal heirs. The Appellate Authority vide judgment dated 12.04.2014, set aside the order of eviction dated 09.11.2011 passed by Rent

Controller while recording that the factum of other adjoining shop/property under occupation of one Mr. Yadwinder Sharma, being the tenant, was never disclosed in the eviction petition, thereby resulting into concealment of material fact on the part of landlady.

6. Impugning the aforementioned judgment dated 12.04.2014, passed by the Appellate Authority, learned counsel for the petitioners submits that the Courts below ignored the pleadings and the evidence available on record. Learned counsel refers to the eviction petition wherein the factum of other adjoining shop, situated towards south of the demised property, being in possession of another tenant against rent of Rs.1300/- was duly pleaded and was further deposed by PW1-Raj Bala. He further submits that the petitioners could not have been non-suited even on account of non-appearance of the old landlady Smt. Krishna Devi ,who was of 82 years of the age, at the time of recording of her evidence and authorized her daughter-in-law vide general power of attorney for the said purpose on 12.08.2008 (Exhibit P1), who appeared as PW1 in order to prove her own bona-fide need as well as that of the old lady.

7. On the other hand, learned counsel for the respondents submits that there was apparent suppression of facts on the part of the petitioners as the factum of the adjoining shop being under tenancy of Mr. Yashender Sharma was neither specifically pleaded; nor proved on record. He points out that aforesaid Yashender Sharma was never called in the witness box, so as to establish that he was occupying the adjoining shop, being tenant under the landlady Smt. Krishna Devi, which was relevant in view of the specific denial made in the written statement in this regard. Learned counsel also submits that in view of subsequent development of the adjoining shops i.e. properties

No.168/3 and 169/3, been sold by one of the petitioner vide registered sale deed dated 02.07.2020, it was established on record that the need of the petitioners was neither genuine nor bona-fide.

8. I have heard learned counsel for the parties and gone through the contents of the paper book as well as the records provided by the respective counsels. I find substance in the submissions made on behalf of the petitioners.

9. In the present case, the petitioners have been non-suited by the Appellate Authority merely on the ground that there happened to be concealment on their part as it was not proved on record that another shop which was also owned by petitioners was not occupied by the other tenant namely Yashender Sharma, besides for the reason of non-appearance of the original landlady, namely, Smt. Krishna Devi. In this regard, a perusal of the eviction petition shows that the factum of another adjoining shop situated towards the south of the demised premises being in occupation of a tenant against payment of rent of Rs.1300/- was duly pleaded and disclosed in the eviction petition itself, followed by its reiteration in the examination-in-chief of PW1-Smt. Raj Bala i.e. the daughter-in-law. Relevant portion from para 3(ii) of the eviction petition is reproduced hereunder for reference:-

“For all five family members, the rental income of Rs.1100/- per month from demise premises and Rs.1300/- per month from adjoining shop situated towards the south of the demise premises is only income of the family.”

10. Moreover, the own witnesses of respondents, namely, Ashok Kumar Goswami (RW2) and Jaspal Verma (RW3) in their cross-examination clearly admitted the factum of the other shop in occupation of Yashender Sharma who was running his office of cable network from there.

11. In view of the aforesaid, there was no suppression of fact on the part of petitioner and the Appellate Authority went wrong while non-suited

them and mere non-examination of the said tenant-Yashender Sharma could have been termed fatal to their claim in the eviction petition. Translated extract from the cross-examination of RW2 (Ashok Kumar Goswami) being relevant is reproduced hereunder:-

“It is correct that one shop was given on rent to the respondent and the other shop is under the tenancy of Yashender Sharma. Yashender Sharma is running his office from the said shop.....”

12. In addition, the original landlady Smt. Krishna Devi even expressed in the eviction petition that the demised premise was fetching rent of Rs.1100/- per month, whereas the adjoining shop situated towards south was fetching rent @ Rs.1300/- per month and for the reason of fetching lesser rent against the demised premises, eviction was prayed for qua the same. In this view of the matter, there was no deficiency on the part of the original landlady as regards the averments qua ingredients of Section 13(3)(a)(i) of the Haryana Urban (Control of Rent and Eviction), 1973.

13. Additionally, the Appellate Authority even went wrong while recording that in the absence of original landlady Smt. Krishna Devi, having appeared as a witness in support of the eviction proceedings, the bona-fide need was not established. Unquestionably, the eviction petition was filed by the original landlady Krishna Devi, however, bona-fide need sought was for herself as well as qua her widowed daughter-in-law, namely, Raj Bala, who appeared as PW1 being the attorney holder under Exhibit P1 and deposed that having lost her husband, she intended to set up a bangle shop in the demised premises so as to earn livelihood to support her old aged mother-in-law besides the three minor children. From the pleadings as well the evidence available on record, the need of the widowed daughter-in-law, namely, Raj Bala qua setting up of a bangle shop so as to earn her livelihood so as to provide education and

better life to her mother-in-law and three children was undoubtedly proved to be genuine and bona-fide. In this view of the matter, the non-appearance of the old landlady, namely, Krishna Devi could not have been termed to be fatal to the cause of the petitioners.

14. Resultantly, in view of the reasoning recorded hereinabove, the revision petition is allowed. The judgment dated 12.04.2014, passed by the Appellate Authority, being against the pleadings and the evidence available on record, is hereby set aside and that of the Rent Controller, passed on 09.08.2011 is restored, consequently, eviction order is passed against the respondents/tenants qua the demised shop.

15. All pending application(s), if any, also stand(s) disposed of.

November 15, 2023
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(HARKESH MANUJA)
JUDGE

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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |