

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

CR-787-2017

Date of Decision: August 11, 2023

LEELA DEVI & ORS

..... Petitioners

Versus

VIJAY LAXMI & ORS

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. S.K. Aggarwal, Advocate for the petitioners.
Mr. Rajinder Goyal, Advocate for respondents No.1 and 2.

HARKESH MANUJA, J. (ORAL)

By way of present revision petition, challenge has been laid to an order dated 20.10.2016 passed by the learned Additional Civil Judge (Senior Division), Kurukshetra-cum-Executing Court whereby an application filed at the instance of petitioners-tenants invoking Section 13(6) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as '1973 Act') seeking restoration of possession has been dismissed.

2. In the present case, the respondents filed an eviction petition against the petitioners inter alia on the grounds of payment of arrears of rent as well as bona fide requirement. The said eviction petition was dismissed by learned Rent Controller vide judgment dated 09.08.2003. Aggrieved thereof, respondents filed First Appeal which came to be allowed on 28.02.2006 thereby an eviction order was passed against the petitioners. The aforesaid order passed by Appellate

CR-787-2017**-2-**

Authority was upheld by this Court as well as by the Hon'ble Supreme Court vide decisions dated 09.01.2014 and 15.04.2014 respectively.

3. Based thereupon, the respondents filed execution application wherein the petitioners surrendered back the possession on 12.01.2015, however, the dispute remained pending before the Executing Court qua certain articles lying thereon. In the meanwhile, an application dated 11.01.2016 (P-2, Pg.16) came to be filed at the instance of petitioners before the Executing Court seeking restoration of possession with averments that instead of possessing the shop in question for a period of one year post its ejectment, the respondents rented it out further in favour of respondent No.3. The said application was opposed at the instance of respondents No.1 & 2 by filing their objections dated 05.07.2016. The Executing Court vide its order dated 20.10.2016 rejected the prayer made by the petitioners.

4. Impugning the aforementioned order in the present revision petition, learned counsel for the petitioners while relying upon a report dated 14.01.2016 made by the Local Commissioner appointed by the Executing Court submits that respondents No.1 & 2 were not found to be in possession of property in question at the time of inspection and instead, respondent No.3 was occupying the same. He further submits that having failed to retain the possession for one year, the same was required to be restored back to the petitioners by the landlord and the same could even be ordered by the Executing Court as well. In support thereof, learned counsel for the petitioners placed reliance on judgments passed by this Court in case of **"M/S Bird Travels (P)Ltd.**

CR-787-2017

-3-

Vs. Ms. Amarjit Kaur and Others” 2014(2) RCR (Civil) 935 and “Pushpa Ahuja Vs. Sunil Nagpal and Others” 2011(2) RCR (Rent)22.

5. On the other hand, learned counsel for respondents No.1 and 2 submits that application filed at the instance of petitioners itself was not maintainable as the same was presented before the Executing Court whereas as per Section 13(6) of 1973 Act, it could have been presented only before the Rent Controller being the competent authority.

6. I have heard learned counsel for the parties and gone through the paper-book. I am unable to find substance in the submissions made by the learned counsel for the petitioners.

7. For deciding the controversy involved in the present case, clause(b) to Section 2, Section 13(6) as well as Section 18 of the 1973 Act are relevant to be considered and discussed, the same are thus reproduced hereunder:-

2(b) "Controller" means any person who is appointed by the State Government to perform the functions of a controller under this Act;

13(6) Where a landlord, who has obtained possession of a building or rented land in pursuance of an order under sub-clause (i) of clause (a) or clause (b) of sub-section (3), does not himself occupy it or if possession was obtained under sub-clause (v) of clause (a) of sub-section (3), his family does not occupy the residential building, or if possession was obtained by him on behalf of his son in pursuance of an order under sub-clause (ii) of clause (a) of sub-section (3), his son does not occupy it for the purpose for which possession was obtained, [for a continuous period of twelve months from the date of obtaining possession or if possession was obtained under sub-section (3A) he does not occupy it for his exclusive personal use, for a continuous period of three years] or where a landlord who has obtained possession of a building under clause (c) of sub-section (3) puts that building to any use or lets it out to any tenant other than the tenant evicted from it, the tenant who has been evicted may apply to the Controller for an order directing that the possession of such building or rented land shall be restored to

CR-787-2017

-4-

him and the Controller shall make an order accordingly.

18. Every order made under the provisions of this Act shall be executed by a civil court having jurisdiction in the area as if it were a decree or order of that court.”

8. Although the State Government issued notifications in exercise of clause (b) of section 2 of the 1973 Act, appointing Civil Judges as Controllers within the limits of their respective jurisdiction, to perform functions under the 1973 Act, however, the power to execute the orders was still conferred upon the Civil Courts by the legislature itself as per Section 18, thereof. Meaning thereby, that under the provisions of the 1973 Act, the power and authority to perform and adjudicate the specific disputes was conferred upon the Controllers, though the Civil Judges, yet the same person or individual with different designation of a Judge was not competent to adjudicate the applications under the 1973 act. Thus, the question was never of nomenclature; but of the specific authority and jurisdiction conferred upon by the legislature. Moreover, under Sub-section 6 of section 13 of the 1973 Act it is the Rent Controller only which has been specifically and categorically conferred with the powers to entertain and decide these applications filed by the tenants seeking restoration of possession and thus the same could not be entertained by the same individual as Civil Judge, exercising powers of the executing court under section 18 assigned to him under the 1973 Act. Equally important, an act has to be performed as far as possible in the manner it has been provided under the relevant legislation with no deviations and that too particularly on the point of jurisdiction or authority which go to the root of the matter.

Nonetheless, in the case of **Pushpa Ahuja** (supra), this court was

dealing with an application filed under the general provisions of section 144 of CPC regarding which no specific power was conferred upon the Controller to deal with it and thus, the observations made therein may not be applicable and binding in the facts and circumstances of the present case being evidently distinguishable wherein the specific issue involved is about exercise of powers under Sub-section 6 of section 13 of the Act for which the Controller has been categorically assigned to adjudicate.

9. Still further the present is a case wherein the application seeking restoration of possession was filed by the petitioners-tenant in the execution proceedings itself and not by way of an independent proceedings or application merely with incorrect nomenclature about the court or the authority. Above all, even on merits, restoration of possession could not have been ordered merely on the basis of report of the Local Commissioner, finding a third party merely present in the premises by holding him to be a new tenant, that too in the absence of any other substantial evidence regarding the contract of tenancy in his favour by respondents-landlord.

10. In view of the discussions made hereinabove, finding no merits in the present case, the same is thus dismissed.

11. Pending applications, if any, shall also stand disposed of.

11.08.2023

tejwinder

(**HARKESH MANUJA**)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>