

CR-1187-2023
DECIDED ON: 24.08.2023

RAMU @ RAMESH KUMAR

.....PETITIONER

VERSUS

KAILASH KUMARI

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL.

Present: Mr. Mani Ram Verma, Advocate with
Mr. Nipun Verma, Advocate and
Mr. Hoshiar Singh, Advocate
for the petitioner.

Mr. J.P. Sharma, Advocate
for the respondent.

VIKRAM AGGARWAL, J (ORAL)

1. The present revision petition is directed against the order dated 23.02.2023 vide which provisional rent was assessed by the Rent Controller, Hansi.

2. The respondent-landlord filed a petition under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as the 'Rent Act') seeking eviction of the petitioner-tenant from a house situated in Hansi, District Hisar. The grounds of eviction were non-payment of rent, diminishing the value and utility of the tenanted premises and personal necessity of the elder son of the respondent-landlord. In the written statement filed by the petitioner-tenant, a stand was taken that an agreement to sell had been executed by the respondent-landlord in favour of the petitioner-tenant and that he had paid the entire sale consideration and had also filed a civil suit for specific performance as a result of which the relationship of landlord and tenant had come to an end. On merits also, the petition was resisted.

3. Before the Rent Controller, when the issue of assessment of provisional rent arose, a stand was taken by the petitioner-tenant that since the relationship of landlord and tenant had been denied, the provisional rent was not required to be assessed. This plea was, however, negated by the Rent Controller, Hansi and in terms of the law laid down by the Supreme Court of India in the case of '**Rakesh Wadhawan and Others Vs. Jagdamba Industrial Corporation and Others**', 2002 (2), PLR, 370, provisional rent was assessed leading to the filing of the present revision petition by the petitioner-tenant.

4. I have heard learned counsel for the parties and have perused the paper book.

5. Learned counsel representing the petitioner-tenant has strenuously urged that the Rent Controller erred in assessing the provisional rent despite the fact that the relationship of landlord and tenant had been denied by the petitioner-tenant. Much emphasis has been laid upon the point that the entire sale consideration stands paid to the respondent-landlord and a suit for specific performance of the agreement to sell has also been filed. Learned counsel has referred to the written statement (Annexure P-1) and has pointed out the specific portions of the written statement wherein the relationship of landlord and tenant was denied. In support of his contentions, learned counsel has relied upon the judgments passed by Co-ordinate Benches of this High Court in **CR-4295-2000** titled as '**Devinder Singh Puri Vs. B.N. Rampal**', 2004 (3) PLR 591, **CR-5850-2006** titled as '**M/s Rachitech Engineering Pvt. Ltd. Vs. M/s Kundan Steels Pvt. Ltd.**' 2007 (3) RCR (Civil) 182 and **CR-1117-2003** titled as '**Ramanand Shastri Vs. Gian Singh**', 2003 (1) RCR (Rent) 735.

6. On the other hand, learned counsel representing the respondent-landlord has submitted that there is no illegality in the order

passed by the Rent Controller, Hansi and that the assessment of provisional rent was done strictly in accordance with law. It has been submitted that the relationship of landlord and tenant was in fact admitted and only a false stand of an alleged agreement to sell having been executed was taken. Learned counsel has submitted that the suit for specific performance was filed by the petitioner-tenant after the filing of the eviction petition by the respondent-landlord. Learned counsel has contended that the impugned order is legal and valid and does not call for any interference in Revisional jurisdiction. In support of his contentions, learned counsel has relied upon the judgment passed by the Hon'ble Apex Court in ***Civil Appeal Nos.8384-8386 of 2017*** titled as '***Jaspal Kaur Cheema and Another Vs. M/s Industrial Trade Links and Others Etc.***', ***2017 (3) RCR (Civil) 794*** and the judgments passed by the Co-ordinate Benches of this High Court in ***CR-3137-1981*** titled as '***Smt. Joginder Kaur Vs. Hindu Undivided Family of Kidar Narth and Son***', ***CR-3302-2006*** titled as '***M/s Rachitech Engineering Pvt. Ltd. Vs. M/s Kundan Steels Pvt. Ltd.***' ***2007 (3) RCR (Civil) 182***, ***CR-5633-2013*** titled as '***Akash Sheet Vs. Naresh Bhutani***', ***2014 (3) RCR (Civil) 75***, ***CR-2210-1982*** titled as '***Asharfi Devi @ Sarswati Devi Vs. Shankar (Died) through LRs***', ***2000 (1) RCR (Rent) 548***, ***CR-1054-2018*** titled as '***Harish Chander Vs. Manjit Singh Gulati and Another***', ***2000 (1) RCR (Rent) 145***, ***CR-1960-2020*** titled as '***Rajinder Kumar Vs. Inder Singh***', ***2000 (2) RCR (Rent) 333 and CR-93-1994*** titled as '***Kishori Lal Vs. Radha Rani Gupta***', ***1994 (2) RCR (Rent) 647***.

7. I have given due consideration to the arguments addressed by learned counsel for the parties.

8. Admittedly, the petition under Section 13 of the Rent Act was filed by the respondent-landlord seeking eviction of the petitioner-tenant from

the tenanted premises. The grounds of eviction were non-payment of rent, diminishing the utility and value of the tenanted premises and *bona fide* necessity.

8.1 A written statement was filed by the petitioner-tenant in which in the preliminary objections, it was averred that there was no relationship of landlord and tenant and the same had ceased to exist after an agreement to sell had been executed in favour of the petitioner-tenant. It was also averred that the tenanted premises was under the tenancy of the petitioner-tenant for the last several years under the previous owner from whom the present respondent-landlord had purchased the tenanted premises. It was averred that since the petitioner-tenant was in possession of the tenanted premises as a tenant, he was willing to purchase the same and accordingly an oral agreement to sell was executed vide which the respondent-landlord agreed to sell the tenanted premises to the petitioner-tenant for a total sale consideration of ₹15,15,000/-. It was also averred that the entire sale consideration had been paid over a period of time and as had been agreed between the parties, the rent was not required to be paid after the payment of 50% of the sale consideration.

9. It, therefore, essentially means that the relationship of landlord and tenant was admitted. It was admitted that the petitioner-tenant was a tenant in the tenanted premises but on account of the agreement to sell having been executed between the parties, the relationship had ceased to exist.

10. In the considered opinion of this Court, this stand cannot sustain in law. The petitioner-tenant was a tenant in the tenanted premises. Merely because an oral agreement to sell had been executed between the parties which itself is yet to be proved since the suit is pending, it cannot be said that

the relationship of landlord and tenant had ceased to exist. The stand taken by

the petitioner-tenant seems to be just a ploy to avoid payment of rent. It has been held by Co-ordinate Benches of this Court in a number of cases that where an agreement to sell had allegedly been executed between the landlord and the tenant, the tenant would not be permitted to deny the relationship of landlord and tenant and the mere execution of an agreement to sell would not *ipso facto* mean that the relationship would come to an end. This view was taken by a Co-ordinate Bench of this Court in **CR-5633-2013** titled as '**Akash Sheet Vs. Naresh Bhutani**', **2014 (3) RCR (Civil) 75** wherein, the Co-ordinate Bench, while dealing with a revision petition filed by petitioner-tenant against an order of eviction held that an agreement to sell would not confer any title on a party unless the same is enforced in law against the executant of such an agreement. It was an admitted case that the matter was pending before the Civil Court and the said matter could go in favour of either party. It was held that since the tenants were in possession of the suit property as tenants, their status with regard to the said property would remain to be that of a tenant and it could not be said that there would be no relationship of landlord and tenant between the parties or that they were not obliged to tender the provisional rent as assessed. The aforesaid findings of the Co-ordinate Bench are reproduced hereinbelow:-

“4. *The tenant-petitioners admittedly failed to tender the provisionally assessed rent on the stipulated date i.e. 15.5.2012. Consequently, the Rent Controller following the law laid down by the Hon'ble Supreme Court in the case of **Rakesh Wadhavan & ors. v. Jagdamba Industrial Corporation, 2002(1) RCR (Rent) 514:2002(2) PLR 370** and the DB judgment of this Court in **Rajan@Raj Kumar v. Rakesh Kumar, 2010(1) RCR (Rent) 386:2012 (2) PLR 201** ordered eviction of the petitioners from the demised premises on the ground of non-payment of provisional rent, as assessed. The petitioners filed an appeal*

before the Appellate Authority which was also dismissed.

5. *Challenging the aforesaid order, counsel for the petitioners has vehemently argued that the impugned orders of eviction have been passed erroneously, ignoring the fact that there is no relationship of landlord and tenant between the parties and the petitioners were not liable to pay any rent, as they have become the owner of the suit property vide agreement to sell dated 27.12.2007 and a civil litigation i.e. suit for specific performance of agreement to sell is already pending between them and even vide order dated 28.3.2011, the Civil Court has directed the parties to maintain status quo with regard to possession of the petitioners over the suit property and further alienation of the suit property.*

6. *The argument raised is liable to be rejected outrightly. It is well settled that an agreement to sell will not confer any title on a party, unless the same is enforced in law against the executant of such an agreement. Admittedly, the matter is pending before the Civil Court and that may go in favour or against the petitioners. Further, it may be noticed that admittedly, the petitioners are in possession of the suit property as tenants and till date, their status with regard to the said property is of tenants and thus, it cannot be said that there was no relationship of landlord and tenant between the parties and that the petitioners were not obliged to tender the provisional rent, as assessed.”*

A similar view was taken by the Co-ordinate Benches of this Court in ***Smt. Joginder Kaur’s case*** (Supra), ***M/s Rachitech Engineering Pvt. Ltd’s case*** (Supra), ***Asharfi Devi’s case*** (Supra), ***Harish Chander’s case*** (Supra), ***Rajinder Kumar’s case*** (Supra) and ***Kishori Lal’s case*** (Supra).

11. I have perused the judgments relied upon by learned counsel representing the petitioner. In the case of ‘***Devinder Singh Puri Vs. B.N. Rampal***’, 2004 (3) PLR 591 and ‘***Ramanand Shastri Vs. Gian Singh***’, 2003

(1) *RCR (Rent) 735*, the tenant had denied the relationship of landlord and tenant. Under the circumstances, the Co-ordinate Bench held that once the relationship had been denied, the Rent Controller would not be required to draw an order of assessment of provisional rent. However, in those cases, the situation was not the same as in the present case and there was no question of there being an admitted tenancy and subsequently an agreement to sell having been arrived at. In those cases, there was a plain denial of tenancy and in fact in the case of *Devinder Singh Puri* (supra), the revision petition was filed by the petitioner-tenant was dismissed while holding that the relationship of landlord and tenant had been admitted. Same was the case in the case of *Ramanand Shastri* (supra). In this case, the stand of the tenant was that the landlord was no longer the landlord and the property in dispute was owned and possessed subsequently by the Waqf Board. This judgment would also, therefore, not come to the aid of the petitioner.

In view of the aforementioned facts and circumstances, I do not find any merit in the revision petition and the same is accordingly dismissed.

(VIKRAM AGGARWAL)
JUDGE

24.08.2023

Prince Chawla

Whether speaking/reasoned Yes/No

Whether reportable Yes/No