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113 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-3249-2023
Date of Decision: 25.05.2023

Gulshan Kumar

..... Petitioner

Versus

Ruchi Chopra and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Tanvir Singh Attriwala, Advocate, and
Mr. G.B.Gilhotra, Advocate,
for the petitioner.

RAJBIR SEHRAWAT, J. (ORAL)

This is a petition filed under Article 227 of the Constitution of India praying for setting aside the impugned order dated 12.05.2023 passed by the Appellate Authority, Ludhiana, whereby the order dated 02.03.2023 passed by the Rent Controller, Ludhiana, allowing the application for leave to contest the eviction petition, has been reversed and the appeal filed by the respondents has been allowed.

As per the facts available on record, the petitioner is a tenant on the land and building situated at Swami Vivekanand Marg, Bhattian Bhandur ke Road, Bhattian, Ludhiana, which was owned by the respondents, along with other co-sharer. As per the alleged lease deed dated 05.08.2020 (Annexure P-1), the duration of tenancy is at the will of the parties. Feeling the requirement of the property and claiming herself to be a widow, the respondent-Shruti Chopra, along with her other sister and co-sharer, filed an eviction petition qua the above-said premises, availing provisions which

prescribe summary eviction of the tenant. In that eviction petition, the petitioner-tenant asserted a right to defend the eviction petition and, accordingly, applied for leave to contest the eviction petition. The Rent Controller had granted the leave to contest the petition to the petitioner. However, on appeal being preferred by the respondent-landlady, the leave to contest the eviction petition has been denied. It is challenging the said order, the present petition has been filed by the petitioner-tenant.

Arguing the case, learned counsel for the petitioner-tenant has submitted that the eviction petition has been filed by the respondent-landlady as a counter blast to the suit for injunction filed by the petitioner-tenant, wherein he has sought injunction against the eviction of the petitioner-tenant. Secondly, the tenancy has been created under an unregistered lease deed, however, the same was still admissible for collateral purposes. Since there is a written lease deed, the petitioner could not be evicted through summary procedure.

Still further, it is submitted that the respondent-landlady is claiming the tenancy to be oral and under the Punjab Rent Act, 1995, (herein-after referred to as, 'the Act') oral tenancy is not even permissible under the Act. Therefore, she could not have filed the eviction petition under the Act. As supplementary argument to rebut the claim of the respondent-landlady, learned counsel for the petitioner-tenant has submitted that the lease deed even bears the signatures of respondent-Shruti Chopra and her sister. Therefore, it is wrong on the part of the respondent-landlady

to assert that the tenancy was oral in nature. However, these aspects can be proved only if the petitioner-tenant was granted leave to defend the eviction petition. Learned counsel has further submitted that although, the respondent-landlady may be having statutory presumption in her favour qua her right to get eviction, however, the said presumption is rebuttable one and the petitioner-tenant could have rebutted the said presumption, only in case, he was permitted to defend the eviction petition. Hence, the order passed by the Appellate Authority deserves to be set aside and the petitioner deserves to be granted leave to defend the eviction petition.

Before proceeding further, it is apt to have reference to the provisions under which the present petition has been filed, as well as, the provisions relating to leave to contest the eviction petition. Section 24(1)(a) of the Act reads as under:-

“24. Right to recover immediate possession of premises to accrue to widows, handicapped persons, old persons freedom fighters and non-resident Indians. - (1) Where the landlord is,-

(a) a widow and the premises let out by her, or her husband; or

(b) a handicapped person and the premises let out by him or her; or

(c) a person who is of the age of sixty-five years or more and the premises let out by him or her; or

(d) a freedom fighter, his widow or dependent son or daughter and the premises let out by him or her;

is required by him or her for his or her family or for any one ordinarily living with him or her for residential or non-residential use, he or she may apply to the Rent Authority for recovery of immediate possession of such premises.”

Section 38(7) of the Act reads as under:-

“38. Procedure to be followed by Rent Authority -

(1) to (6) XXX XXX XXX

(7) (a) *Every application by a landlord for the recovery of possession of any premises on the ground specified in clause (d) or clause (e) or clause (g) of sub-section (2) of section 20 or under section 21, or under section 22 or under section 23 or under section 24 or under section 31 shall be dealt with in accordance with the procedure specified in this sub-section.*

(b) *The tenant on whom the summons is duly served in accordance with sub-section (5) in the Form specified in schedule III to this act shall not contest the prayer for eviction from the premises unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Rent Authority as hereinafter provided; and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction on the ground aforesaid.*

(c) *The Rent Authority shall give to the tenant leave to contest the application if the affidavit filed by the tenant discloses such facts as would disentitle the*

landlord from obtaining an order for the recovery of possession of the premises.

- (d) *Where leave is granted to the tenant to contest the application, the Rent Authority shall ordinarily commence the hearing of the application within seven days of the grant of such leave and shall provide day to day hearing and shall dispose of the application within thirty days of starting of such hearing failing such commencement of hearing or disposal of application within such time, the Rent Authority shall inform the [Appellate Authority] the reasons therefor.*
- (e) *Where the leave to contest under clause (c) is denied to the tenant he may file an application for review before the Rent Authority within ten days of such denial and the Rent Authority shall endeavour to dispose of such application within seven days of its filing.”*

Having heard the learned counsel for the petitioner and having perused the case file, this Court does not find any substance in the argument raised by the learned counsel for the petitioner. A perusal of Section 24 of the Act makes it clear that if the landlady has filed eviction petition claiming herself to be a widow. She has absolute right to recover immediate possession of the tenanted premises. No 'ifs' and 'buts' are attached to her right to get possession. The application filed by the petitioner-tenant does not even dispute the factum that the respondent-landlady is a widow. Therefore, the right of the respondent-landlady is absolute in statutory terms. The said right is not a question of presumptions, as such, which could have

been rebutted by the petitioner-tenant. Hence, this Court does not find any illegality or perversity in the order passed by the Appellate Authority declining the leave to contest the eviction petition.

The other aspect which deserves notice is that under the provisions of the Act, the tenant can apply for leave to defend the eviction petition only in case he takes a fact which, per se, denies the right of the landlady to seek eviction. In case of the specified landlord under Section 24 of the Act, being a widow, the only fact which could have denied the right to the landlady to seek eviction was; to claim that she was not the widow. However, as mentioned above, there is not even a pleading or assertion in that regard. Any other aspect of the validity of the rent agreement, its terms or its hue and nature is altogether irrelevant for the purpose of Section 24 of the Act. The argument of the counsel for the petitioner that the landlady has asserted an oral agreement, whereas it is a written agreement; is also irrelevant. Even the petitioner admits that there is a tenancy agreement. Therefore, the petitioner-tenant could not have claimed any right to defend the eviction petition for any other reason.

For the same reason; even the argument of the learned counsel for the petitioner that the eviction petition has been filed by the respondent-landlady as a counter blast to the suit is also liable to be rejected. Pendency of any other proceedings cannot create an estoppel against Section 24 of the Act. Rather, the fact that the petitioner-tenant has gone to the Civil Court to make the respondent-landlady entangled with the litigation; itself shows that

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the effort of the petitioner-tenant is, to somehow, defeat the right of the respondent-landlady to seek eviction, without there being any substantial reason in his favour. Needless to say; that for seeking eviction under Section 24 of the Act, the landlord/landlady is not required to plead or to prove the 'bona fide' of the requirement; as such. Therefore, any argument of a tenant against the requirement of the landlady, being a widow, is rendered totally otiose.

In view of the above, finding no merit in the present petition, the same is dismissed.

(RAJBIR SEHRAWAT)
JUDGE

25.05.2023
adhikari

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No