

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.R. No.3174 of 2022 (O&M)

Reserved on: 09.10.2023

Date of Order: 19.10.2023

M/s J.S. International

.Petitioner

Versus

Jaswinder Kaur Sidhu

..Respondent

C.R.No.78 of 2022 (O&M)

Harjinder Chahal and others

...Petitioners

Versus

M/s J.S. International

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. B.S.Bedi, Advocate, for the petitioner(s)
Mr. Divanshu Jain, Advocate, for the respondent.

ANIL KSHETARPAL, J

1. Two connected civil revisions, one filed by the tenant, whereas the other filed by the landlord have come up for final disposal.

2. CR No.78 of 2022 has been filed by the landlords in order to challenge the order dated 21.05.2014, passed by the Rent Controller, while dismissing the petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as 'the 1949 Act'), which in appeal was affirmed by the Appellate Authority vide order dated 30.09.2021.

3. CR No.3174 of 2022 has been filed by the tenant to challenge the correctness of concurrent orders passed by the Rent Controller which in appeal was affirmed by the Appellate Authority while allowing landlady's

petition under Section 13-B of the 1949 Act while ordering eviction of the tenant-petitioner from the front portion of the first floor measuring 450 square feet approximately with common bathroom of SCO 33, Sector 33-D, Chandigarh.

4. At the relevant time, the provisions of the 1949 Act were applicable to the area of Chandigarh. Under Section 13 of the 1949 Act, various grounds on which the landlord is entitled to seek eviction of the tenant have been enlisted. Section 13-B of the 1949 Act enables non-resident Indian to recover immediate possession of residential or scheduled building and/or non residential building. This is a special privilege granted to the Non Resident Indians to seek immediate possession of the building, if the owner requires the premises for his or her bonafide use.

5. In Civil Revision No.78 of 2022, the landlords (the petitioners herein) sought eviction of the tenant on the ground of non-payment of rent and bonafide personal necessity which was dismissed by the Courts below on the following grounds:-

- (i) The entire medical record of the parents has not been produced to prove that the father of Sh. Harjinder Chahal suffered a heart attack and is now settled in Mohali, whereas Mother of Sh. Harjinder Chahal suffered paralysis attack and she has come back to Mohali.
- (ii) No evidence has been led to prove that their business is hit by the recession in Germany.
- (iii) Second floor of the premises was let out in January, 2008.
- (iv) Half portion of the first floor is vacant but the landlords have not started any business.

6. In Civil Revision No.3174 of 2022, the Rent Controller has found that the landlady has successfully proved her bonafide necessity as her husband wants to come back to India and take care of his aged and ailing parents.

7. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book along with the requisitioned record.

8. In the considered opinion of the Court, first of all it would be appropriate to take up Civil Revision No.3174 of 2022, for discussion.

9. The learned counsel representing the petitioner (tenant) has forcefully contended that the previous petition on identical grounds for eviction of tenant has been dismissed by the Rent Controller which in appeal has been affirmed by the Appellate Authority. He submits that the finding of the Rent Controller and Appellate Authority in a subsequent petition is contradictory and therefore, not reliable. He further submits that the landlady has failed to prove that her need is bonafide and the petition was actually filed by her. He submitted that comparison of the signatures of the landlady on the original petition with the signatures on the passport prove that the petition was not filed by her. He further submitted that Sh. Harjinder Singh was not authorised to appear in the case as both the special power of attorneys were prepared on 02.03.2018 and 09.03.2018. He further submits that the second floor of the premises has been let out by the landlady in January, 2008 and therefore, the requirement of the landlady is not bonafide.

10. On the other hand, the learned counsel representing the respondent has contended that there is no scope for interference in the

concurrent orders passed by the courts below while ordering tenant's eviction. He submits that the tenant's counsel has failed to point out the perversity or substantive error in the orders passed by the courts below.

11. This court has analyzed the arguments of the learned counsel representing the parties.

12. The major argument of the learned counsel representing the petitioner is on the judgments passed by the Rent Controller which in appeal was affirmed by the Appellate Authority in a petition filed under Section 13 of the 1949 Act. It may be noted here that the relevancy of previous judgment passed is governed by Chapter-II of Part-I of the Indian Evidence Act, 1872 (hereinafter referred to as 'the 1872 Act'), starting from Section 40 to Section 44. Section 40 provides that if the previous judgments results in bar to the second suit or trial or the law prevents any courts from taking cognizance of a subsequent suit or holding trial, such judgment shall be binding. This has a reference to section 11 of the Code of Civil Procedure, 1908 or in other words doctrine of resjudicata. Section 11 of the Code of Civil Procedure, 1908, is applicable if the previous judgment has become final between the parties. In this case, the previous judgment is not final as it is subject matter of challenge in Civil Revision No.78 of 2022. Hence, Section 11 of the Code of Civil Procedure, 1908 is not applicable and consequently Section 40 of the Indian Evidence Act is not attracted.

13. Section 41 of the 1872 Act provides that a final judgment, order or decree of a competent court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction which confers or takes away from any person any legal character or which declares any person to be entitled to any such character, or to be entitled to any specific thing, is relevant. In this

case, the aforesaid provision is not attracted.

14. Section 42 of the 1872 Act provides that the judgments, orders or decrees other than those mentioned in section 41 are relevant if they relate to matters of a public nature relevant to the enquiry. Hence, Section 42 is also not attracted in the present case.

15. Section 43 of the 1872 Act provides that judgments, orders or decrees, other than those mentioned in sections 40, 41 and 42, are irrelevant unless the existence of such judgment, order or decree is a fact in issue. Hence, the previous judgments passed by the Rent Controller would not be relevant for the decision of the present case.

16. The next argument of the learned counsel though attractive in the first blush, however, on a deeper scrutiny found without substance. The learned counsel representing the tenant has tried to make out a new case for the first time in the revision petition which ordinarily is not permissible. In fact, originally the SCO No.33 was owned by various members of the family of Sh. Harjinder Singh Chahal, Subsequently, they all transferred the property in favour of Smt. Jaswinder Kaur Sidhu, wife of Sh. Harjinder Singh Chahal. The rent petition under Section 13B was filed by Smt. Jaswinder Kaur Sidhu, who is a Non Resident Indian settled in Germany. The tenant claims that her signatures on the rent petition when compared with her signatures on the passport are different. In this case, the petition was filed by Smt. Jaswinder Kaur Sidhu. Her husband Sh. Harjinder Singh Chahal appeared in evidence. For the first time, this court in a revision petition this issue cannot be permitted to be taken up particularly when it was the duty of the petitioner to confront Sh. Harjinder Singh Chahal when he appeared in evidence in order to solicit his views. In absence thereof, the

argument cannot entertained.

17. The next submission of the learned counsel is based on the fact that the power of attorney was issued by the landlady in favour of her husband subsequently. Sh. Harjinder Singh Chahal was one of the landowner. He is also the husband of the landlady. There is no dispute inter-se amongst the family members. The landlady along with other family members has a bonafide requirement of the tenanted premises. In such circumstances, Sh. Harjinder Singh Chahal even though not specifically authorised by the special power of attorney could appear on behalf of the landlord. In such circumstances, it would not be appropriate to reject the landlady's petition only on this ground.

18. The last argument of the learned counsel representing the tenant is also without substance because in the rent petition itself, the landlady has specifically stated that she does not require second floor of the premises. In such circumstances, the tenant cannot take benefit of the fact that the top floor was rented out by the landlady in the year 2008.

19. Moreover, the scope of interference in the concurrent order passed by the Rent Controller which was affirmed by the Appellate Authority is limited in view of the judgment passed by the 5 Judges Bench in **Hindustan Petroleum Corporation Ltd. vs. Dilbahar Singh(2014) 9 SCC 78.**

20. The last argument of the learned counsel representing the petitioner is with regard to the availability of the half portion of the first floor of SCO No.33. It has come in evidence that there is only one common toilet on the first floor which is in possession of the tenant. It is not appropriate and reasonable to expect from the landlady that she will use

remaining portion of SCO No.33 even in the absence of toilet facility.

21. Keeping in view the aforesaid facts and discussion, finding no merit, the Civil Revision No.3174 of 2022 is dismissed. Consequently, Civil Revision No.78 of 2022 is dismissed as infructuous as the same is not required to be decided in view of the fact that the order of eviction of tenant has been affirmed in a subsequent eviction petition.

22. All the pending miscellaneous applications, if any, are also disposed of.

October 19, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	:YES/NO
Whether reportable	:YES/NO