

CR-4212-2023 (O&M)

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

**CR-4212-2023 (O&M)
Decided on:- 06.12.2023**

Kultar Singh

....Petitioner

Versus

Monika Chopra and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Amit Dhawan, Advocate
for the petitioner.

AMARJOT BHATTI, J.

1. The petitioner/tenant – Kultar Singh has filed civil revision against impugned common judgment dated 10.07.2023 passed by learned Appellate Authority, Jalandhar vide which the appeals preferred by Kultar Singh and Charanjit Singh against the order dated 10.09.2018 passed by learned Rent Controller, Jalandhar was dismissed.

2. As per the facts of the case, Monika Chopra, the landlady (petitioner in the main case) filed ejectment petition under Section 13 of the East Punjab Urban Rent Restriction Act amended upto date for the eviction of respondents No. 1 and 2 from demised shop bounded as North : Monga electric, South: Property of petitioner, East: National Guest House and West: Road, which is a part of property bearing No. EK-231/1 Phagwara Gate, Jalandhar.

Brief facts of the petition are that the abovementioned demised shop was originally owned by Col. Veeramol Singh and Major Haramol Singh, who sold the same to the petitioner vide sale deeds dated

04.05.2015 and 25.05.2015. As such, the petitioner had become owner/landlady of the demised shop as detailed in the head note of the petition. Col. Veeramol Singh and Major Haramol Singh rented out the shop to Kultar Singh at the rate of Rs. 1600/- per month. Since, the demised shop has been purchased by the petitioner from its real owners, therefore, relationship qua the property in question as a landlord and tenant stands established between Monika Chopra the landlady and Kultar Singh the tenant. The petitioner previously was not fully aware regarding the actual facts and later on came to know that respondent No. 2 was not the tenant, rather, his status over the shop of the petitioner was as a sub-tenant. After purchasing the property, the petitioner made thorough inquiry and came to know that Veeramol Singh and Haramol Singh rented out the shop to Kultar Singh respondent No. 1, who later on had sublet the shop to respondent No. 2 without the knowledge and consent of the landlord for a valuable consideration and this fact was not in the knowledge of the petitioner either at the time when the property was purchased and another petition was filed by her against another sitting tenant, which is also pending in Court. It was further submitted that Kultar Singh had constructed a big complex and said complex is now known by the name Sangam Complex having number of shops, some of the shops were sold or rented out by said Kultar Singh to different persons and was also doing his own work in the said complex under the name and style Seamens Industrial Electrical Company. In the disputed shop after subletting the same to respondent No.2, Kultar Singh was left with no right, title, interest, concern or connection and had started his independent business in his own shop in Sangam Complex. On the other hand, respondent No.2

had started his business in the shop in question under the name and style Seamens Electrical Store, which was being run by respondent No. 2 independently as a proprietor. The property was purchased by the petitioner for her own personal necessity, however, since the tenant had sublet the shop and presently sub-tenant was running the shop, therefore, the petitioner was not in a position to file application on the ground of personal necessity against the sub-tenant as the original tenant was not in occupation or in possession over the shop in question. Therefore, the petitioner reserved her right for personal necessity and the petition was filed under the ground of sub letting. The respondents were liable to be ejected from the shop in question on the grounds that the respondent No. 1 being tenant was in arrears of rent with effect from 01.06.2015 till the filing of the present petition at the rate of Rs.1600/- per month, which he had neither tendered/offered nor deposited. It was further submitted that the respondent No.1 had sublet the shop to respondent No.2 since 2009 and from that day, respondent No. 2 was in possession, occupation and control over the shop as a sub-tenant and was doing his independent business under the name and style of Seamens Electrical Store. The petitioner did not have any such like property within the limits of Municipal Corporation, Jalandhar. The petitioner at number of times demanded arrears of rent from the tenant and had been requesting the respondents to vacate the shop but they refused to do so. Hence, the present petition for ejectment of respondents from the demised shop.

3. Notice of the petition was given to the respondents who contested the present petition and filed joint written reply, wherein they had taken preliminary objections regarding maintainability; not coming to

the Court with clean hands; suppressing the true facts and no cause of action. On merits, it was denied that the property was sold to petitioner vide sale deeds dated 04.05.2015 and 25.05.2015 as alleged. The relationship of landlord and tenant was also denied by the answering respondents with the petitioner. It was alleged that the shop was rented out to respondent No. 1 by Col. Veeramol Singh and Maj. Haramol Singh at the rate of rent of Rs. 1550/- per month and not at the rate of Rs. 1600/- per month, as alleged by the petitioner. It was further submitted that if there existed correct and legal sale deeds in favour of the petitioner, in that event, respondent No. 1 would have no objection in giving the rent to the petitioner. The respondents are related to each other, as respondent No. 2 is nephew of respondent No. 1 and due to the fact that respondent No. 1 was not keeping good health, the respondent No. 2 used to help respondent No. 1 in his business. The fact regarding subletting the demised shop to respondent No.2 was denied. It was further denied that respondent No. 1 constructed big complex i.e. Sangam Complex. However, partnership business is there under the name and style of Seamens Industrial Electric Company and there are four partners in the said concern. The story regarding subletting was denied. Therefore, the petition deserved dismissal with cost.

4. Rejoinder to the written reply was filed by the petitioner, wherein, she had denied the averments mentioned in the written reply and reiterated the facts as mentioned in the rent petition. From the pleadings of the parties, following issues were framed by the Rent Controller :-

- (1) *Whether the respondents are under the arrears of rent? OPP*
- (2) *Whether the respondent No. 1 sublet the disputed shop to the respondent No. 2? OPP*

(3) *Whether the present petition is not maintainable?* OPR

(4) *Whether the petitioner has concealed the material facts from this Court?* OPR

(5) *Relief.*

5. In order to prove the rent petition, the petitioner Monika Chopra examined her Power of Attorney Holder namely Neeraj Chopra as AW1. She also examined Sanjay Chopra as AW2. Thereafter, Neeraj Chopra tendered certified copy of FIR dated 26.07.2011 Ex.P-14 and closed the petitioner's evidence in affirmative.

6. In order to rebut the case of the petitioner, the respondent No.1 Kultar Singh himself stepped into the witness box as RW1, whereas, respondent No. 2 Charanjit Singh stepped into the witness box as RW2. Thereafter, evidence of the respondents was closed by the order of the Court on dated 07.08.2018.

7. After hearing the arguments advanced by learned counsel for both the parties, the petition filed by the petitioner/landlady was allowed vide order dated 10.09.2018 and the respondents were directed to hand over the vacant possession of disputed shop to the petitioner/landlady within two months from the date of passing of order.

8. Feeling aggrieved of this order, the respondent No. 1/tenant Kultar Singh filed Rent Appeal No. 125 of 2018, whereas, respondent No.2 Charanjit Singh filed Rent Appeal No. 7 of 2022, which were dismissed vide common judgment dated 10.07.2023. Feeling aggrieved of this judgment, the present civil revision has been filed by tenant Kultar Singh (respondent No. 1 in rent petition).

9. I have heard the arguments advanced by learned counsel for the petitioner/tenant Kultar Singh. The learned counsel for the

petitioner/tenant Kultar Singh argued that the impugned judgment dated 10.07.2023 passed by learned Appellate Authority, Jalandhar dismissing the appeal against the ejectment order dated 10.09.2018 passed by learned Rent Controller, Jalandhar is not based on sound footing and the same are liable to be set aside. The learned Courts below failed to appreciate that respondent No. 1 Monika Chopra, the landlady failed to lead any convincing evidence on record that the demised shop has been sublet by the present petitioner Kultar Singh in favour of Charanjit Singh @ Channi, respondent No. 2. In-fact, Col. Veeramol Singh and Major Haramol Singh had rented the shop in favour of the present petitioner Kultar Singh in the year 1988 at the rate of Rs. 1550/- per month. The present petitioner is senior citizen, retired from Navy in the year 1980. Thereafter, he started doing his business in the shop in question under the name and style of Seamens Industrial Electrical Company. The respondent No. 2 Charanjit Singh @ Channi is his nephew who was not doing any independent business. Charanjit Singh @ Channi started helping him in the shop in question as the present petitioner Kultar Singh was not keeping good health.

The onus was on the landlady to lead convincing evidence on record that the shop in question was sublet by the present petitioner Kultar Singh in favour of respondent No. 2 Charanjit Singh @ Channi but in this regard no such convincing evidence has been led. As per the case of respondent No. 1 Monika Chopra landlady, the demised shop was sublet by the present petitioner Kultar Singh in favour of respondent No. 2 Charanjit Singh @ Channi in the year 2009. However, she herself purchased the shop in the year 2015. The respondent No. 1 Monika Chopra

has concocted a false story to create a ground for ejectment. The learned Rent Controller while deciding this ejectment petition has laid undue emphasis to the visiting cards standing in the name of Charanjit Singh @ Channi. Charanjit Singh @ Channi as RW-2 categorically stated that the demised shop has not been sublet to him by the present petitioner nor he is in possession, occupation or control over the same as sub-tenant. The statements of Kultar Singh RW-1 and Charanjit Singh @ Channi RW-2 have not been properly appreciated. On the other hand, the landlady has not opted to step into the witness box to prove the facts stated in the ejectment application. The learned counsel for the petitioner examined Neeraj Chopra, the Power of Attorney Holder on behalf of landlady as AW-1. In the absence of testimony of Monika Chopra, landlady, adverse inference should be drawn. No reliance can be placed on the statement of Neeraj Chopra AW-1 and Sanjay Chopra AW-2. The documents which are relied upon by the learned counsel for respondent No. 1 i.e. the visiting cards, photographs cannot be given any importance. The copy of FIR Ex.P-14 has been wrongly relied upon as no witness has come forward to prove the same. The possession of Kultar Singh the present petitioner, is duly established from the rent receipts proved on record as Ex.R1 to Ex.R3. It was the present petitioner/tenant Kultar Singh who was making payment of the rent, therefore, there was no question of subletting the demised shop by Kultar Singh in favour of Charanjit Singh @ Channi, respondent No. 2.

The learned counsel for the petitioner raised the issue that the ejectment application has been filed under the provisions of East Punjab Urban Rent Restriction Act, 1949, whereas, it should have been filed under

the Punjab Rent Act, 1995. The ejectment petition was filed on 15.01.2016, when the new Act had already come into force i.e. with effect from 30.11.2013. The learned Rent Controller and the Appellate Authority have failed to consider this fact.

Therefore, the findings given by the learned Rent Controller on merits while passing ejectment order dated 10.09.2018 and the judgment dated 10.07.2023 passed by the learned Appellate Authority, dismissing the appeal filed by Kultar Singh are without any justification. The findings given by the Courts below are not on sound footing, therefore, the ejectment order passed on the ground of subletting is liable to be set aside.

10. I have considered the arguments and have gone through the record carefully. Monika Chopra filed ejectment petition under Section 13 of East Punjab Urban Rent Restriction Act regarding the shop which is part of property No. EK-231/1 Phagwara Gate near Bhagat Singh Chowk, Jalandhar City with the boundaries as detailed in the ejectment petition. It is not disputed that earlier the shop in question was owned by Col. Veeramol Singh and Major Haramol Singh, who had rented out the shop in favour of Kultar Singh the present petitioner. As per the case of landlady, she has purchased the shop in question and thus stepped into the shoes of previous landlord. The present petitioner Kultar Singh and Charanjit Singh @ Channi respondent No. 2 filed their joint written reply claiming that in case the shop in question is purchased by Monika Chopra the landlady, then they are ready to pay the rent to her at the rate of Rs. 1550/- per month. While filing the present civil revision the relationship of landlord and tenant between Monika Chopra and Kultar Singh is not disputed. The

learned counsel for the petitioner has mainly argued on the point that the ejectment order has been wrongly passed on the ground of subletting the demised shop by Kultar Singh petitioner/tenant in favour of Charanjit Singh @ Channi, respondent No. 2. The learned Rent Controller has decided issue No. 2 regarding subletting in favour of Monika Chopra the landlady and against the respondents i.e. the present petitioner Kultar Singh and respondent No. 2 Charanjit Singh @ Channi.

In order to prove the ground of ejectment of subletting, Neeraj Chopra AW-1 stepped into the witness box being Power of Attorney Holder of his wife Monika Chopra and took the stand that the demised shop was sublet by Kultar Singh in favour of Charanjit Singh @ Channi, approximately in the year 2009. During cross-examination, he conceded that the shop in question was purchased in the year 2015 and at that time Charanjit Singh @ Channi was in possession of the shop. This witness further stated that on inquiry he had come to know that the demised shop was in-fact rented out in favour of Kultar Singh and it is he who had sublet the same in favour of his nephew Charanjit Singh @ Channi. The version narrated by Neeraj Chopra, Power of Attorney Holder AW-1 is supported by Sanjay Chopra AW-2. However, the allegation of subletting of the demised shop was denied by Kultar Singh the present petitioner as well as by Charanjit Singh @ Channi respondent No. 2. Kultar Singh also stepped into the witness box as RW-1 to prove his version and Charanjit Singh @ Channi also stepped into the witness box as RW-2 to confirm the stand taken by the petitioner/tenant Kultar Singh.

I have carefully gone through the statements of witnesses examined by both the parties and I have also gone through the ejectment

order passed by the learned Rent Controller vide order dated 10.09.2018 and the judgment passed by the learned Appellate Authority dated 10.03.2023 vide which the appeal preferred by Kultar Singh was dismissed. It has been rightly pointed out by the Courts below that when Monika Chopra filed the ejectment petition, Kultar Singh was served on his address C/o Seamens Industrial Electrical Company, Sangam Complex, Phagwara Gate, Jalandhar and Charanjit Singh @ Channi was served on address Seamens Electrical Store EK-231/1, Phagwara Gate, Jalandhar. This fact indicated that Kultar Singh the present petitioner was working in his shop situated at Sangam Complex, Phagwara Gate, Jalandhar, whereas, Charanjit Singh @ Channi respondent No. 2 was working in the demised shop. It is rightly observed by the Courts below that it was not possible for the landlady to bring any direct evidence regarding subtenancy. Kultar Singh, the petitioner took the stand that he was not keeping good health, therefore, Charanjit Singh @ Channi his nephew used to help him in running his shop. Kultar Singh as RW1 was cross-examined who during his cross-examination admitted that he has not placed on record any document to show that he was not keeping good health. During further cross-examination, he admitted that he along with his son and wife jointly owned a shop at Sangam Complex, Phagwara Gate, Jalandhar in which he along with his son and two grandsons was running the business under name and style of Seamens Industrial Electrical Company. The learned counsel for landlady further confronted him with his visitor card which is Ex.A-10. Thereafter, he was also confronted with the visitor cards Ex.A-11 and Ex.A-12 which he admitted as correct and these two visitor cards of Seamens Electrical Store at Phagwara Gate near Bhagat Singh Chowk,

Jalandhar City i.e. the demised shop in which there was name of Charanjit Singh @ Channi alone with no reference of the present petitioner Kultar Singh. In case Kultar Singh was running his business in the demised shop and Charanjit Singh @ Channi was merely helping him then it was not possible for Charanjit Singh @ Channi respondent No. 2 to publish visitor cards in his name alone. The cross-examination of Kultar Singh RW-1 is further material where he himself admitted that he did not know about the statement of account regarding the shop in question nor he checked the account on day to day basis or on weekly or monthly basis. Later on, he claimed that Charanjit Singh @ Channi himself showed the accounts periodically. In the case in hand, Kultar Singh RW-1 could not produce even a single document to show that he was working in the demised shop. So far as the rent receipts Ex.R-1 to Ex.R-3 are concerned, these are of the period much prior to the purchase of shop by Monika Chopra the landlady nor she has claimed the arrears of rent for the said period. The interest and right of Monika Chopra came into existence after the purchase of shop from the original owner. Apart from this, there is copy of FIR No. 80 dated 26.07.2011 registered on the written complaint of Charanjit Singh where he claimed that he was running the shop in the name of Seamens Electrical, Phagwara Gate, Jalandhar. There was no recital in the FIR that the shop belonged to Kultar Singh the present petitioner. Furthermore, Kultar Singh during his cross-examination also conceded that the shop in opened and closed by Charanjit Singh @ Channi who is respondent No. 2.

Therefore, considering the aforesaid facts collectively clearly indicate that it was respondent No. 2 Charanjit Singh @ Channi who was running the business in the demised shop. It is also rightly pointed out that

subtenancy between the present petitioner Kultar Singh and Charanjit Singh @ Channi respondent No. 2 is a secret arrangement. They are closely related with each other. It was not possible for the landlady to bring any direct evidence regarding this arrangement. In order to ascertain sub tenancy, one is to see the facts and circumstances of the case. In the case in hand, the present petitioner failed to lead any convincing evidence on record to show that it is he who is running the business in the demised shop. It was for him to produce evidence in the shape of documents to establish that he was in possession and the business was being carried out by him.

The stand taken by the learned counsel for the petitioner that the ejectment petition should have been filed under the new Act i.e. the Punjab Rent Act, 1995 which came into force on 30.11.2013 does not hold much ground as this objection should have been raised by the tenants at initial stage when they filed their written reply to the ejectment petition. The ejectment petition was filed on 15.01.2016 and it was ultimately decided on 10.09.2018. During this entire period, no such objection was raised. Thereafter, this objection was not raised before the First Appellate Authority. I have also gone through the grounds raised in the present civil revision and no such stand is taken even while filing the present civil revision. This objection was raised for the first time while arguing the present civil revision. Moreover, the ground for ejectment on subletting was available under Section 13(2)(ii) of the East Punjab Urban Rent Restriction Act, 1949 and this ground of ejectment is also available under Section 26 and 27 of the Punjab Rent Act, 1995. Under these circumstances, the arguments advanced by learned counsel for the

petitioner on this point does not hold any ground.

The facts of the case and the evidence on record were rightly considered and appreciated by the learned Rent Controller, Jalandhar as well as by the learned Appellate Authority, Jalandhar. The findings regarding issue No. 2 about subletting of the demised shop are fully justified and the same are accordingly, upheld. Therefore, finding no illegality or irregularity committed by the Courts below, the civil revision preferred by the present petitioner Kultar Singh is accordingly, dismissed.

Pending application(s), if any, shall also stands disposed of.

The photocopies of records received from the two Courts below be sent back to the concerned quarters.

06.12.2023

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(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No