

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.130

Case No. : C. R. No. 5877 of 2023

Date of Decision : October 05, 2023

Parveen Petitioner
vs.
Jagdeep Kaur and another Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

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Present : Mr. Amit Gupta, Advocate
for the petitioner.

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GURBIR SINGH, J. :

1. Challenge in the present revision petition filed under Article 227 of the Constitution of India is to the order dated 19.09.2023 (Annexure P-4), passed by the Court of learned Rent Controller, Chandigarh, whereby the application under Section 14 of the East Punjab Urban Rent Restriction Act, 1949 (for brevity – the Rent Act) read with Order 7 Rule 11 CPC (Annexure P-1), filed by the petitioner, has been dismissed.

2. The facts in brief, as culled out from the paper book, are that the respondents filed a rent petition for ejectment of the petitioner-tenant wherein respondent no.1 is landlady and respondent no.2 is constituted Attorney of respondent no.1 as per General Power of Attorney (Annexure P-5).

3. On appearance before the Court, the petitioner-tenant moved application under the Rent Act (Annexure P-1) on the ground that prior to

the filing of the present rent petition, respondent no.2 Manjit Singh earlier filed the rent petition titled as Manjit Singh vs. Parveen, which was dismissed vide order dated 22.11.2019 and appeal filed by respondent no.2 against the said order is also pending before the Court of learned Additional District Judge, Chandigarh. The instant rent petition has been drafted in such a manner for creating illusion of cause of action in order to create a fresh cause of action for filing the present petition. In the earlier rent petition, respondent no.2 produced Attorney of respondent no.1 but in spite of that, he could not succeed in that rent petition. In the same manner, the instant rent petition has been filed on the basis of Attorney, having no power to file the rent petition against the petitioner. So, if the averments in the petition be read in conjunction with the documents relied upon, it becomes apparent and clear that the present rent petition lacks cause of action and the same deserves to be out-rightly dismissed.

4. The respondents contested the application and filed reply, wherein it has been stated that the earlier rent petition was filed on the ground of non-payment of rent which was due upto the year 2016 and even thereafter, the rent was continuously accruing. In the instant rent petition, the rent has been claimed from 30.11.2022 and onwards. In the earlier petition, only Manjit Singh was the petitioner whereas in the instant rent petition, Jagdeep Kaur and Manjit Singh – both are the petitioners. Appeal against the judgment passed in the earlier rent petition is pending adjudication. It was further submitted in the reply that Pritam Kaur Sekhon (since deceased) inducted the petitioner as tenant in the demised premises during her life-time and unfortunately she died on 21.12.2009. Thereafter,

the demised premises has been transferred in the name of her daughter Jagdeep Kaur – respondent no.1 vide transfer letter.

5. Learned counsel for the petitioner has argued that the earlier petition filed by respondent no.2 Manjit Singh has already been dismissed and appeal against the said dismissal is pending adjudication. So, the subsequent petition is not maintainable. Moreover, Manjit Singh has filed the petition on the basis of General Power of Attorney (Annexure P-5), but in the said document, it is not mentioned that he was authorized to file the rent petition. It has further been argued that the said Power of Attorney was required to be registered, otherwise the same cannot be taken into consideration. Reliance in support of this contention has been placed on a judgment of Hon'ble Supreme Court titled as **Suraj Lamp and Industries Pvt. Ltd. vs. State of Haryana and another** reported as **2012 AIR SC (Civil) 91** and a judgment passed by Hon'ble High Court of Kerala in the case of **Gokul Anand vs. State of Kerala – WP(C) No. 2129 of 2023**, decided on 06.02.2023. It has been further submitted that the ownership has been transferred in the name of Jagdeep Kaur by way of fraud and misrepresentation. The tenanted premises was allotted in the name of Har Amar Ajit Singh and thereafter, the same was transferred in the name of Pritam Kaur on the basis of Will dated 08.06.1999 executed by Har Amar Ajit Singh. However, Har Amar Ajit Singh subsequently executed another Will dated 01.06.2001, in which he bequeathed his entire property to his nephew namely Gurbal Singh. Pritam Kaur filed a probate petition but did not implead Gurbal Singh as a party in the said probate petition. Pritam Kaur was also not related to Har Amar Ajit Singh. The petitioner is caught

between devil and deep sea. The payment of any amount by the petitioner would be a great risk. In case, respondent no.1 loses the aforesaid litigation, the petitioner will have to pay the money again. Respondents intentionally concealed the material facts from the Court and drafted the rent petition in a devious manner.

6. I have heard submissions made by learned counsel for the petitioner and perused the case file.

7. Order 7 Rule 11 CPC reads as under :-

“11. Rejection of plaint - The plaint shall be rejected in the following cases -

- (a) where it does not disclose a cause of action;*
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so;*
- (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
- (d) where the suit appears from the statement in the plaint to be barred by any law;*
- (e) where it is not filed in duplicate;*
- (f) where the plaintiff fails to comply with the provisions of rule 9;*

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]

8. Thus, a petition can be rejected only on the grounds mentioned above, i.e. where it does not disclose a cause of action; where the relief claimed is under-valued and the petitioner, on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so; where the relief claimed is properly valued but the plaint is written upon insufficiently stamped paper and the petitioner, on being required by the Court to supply the requisite stamp-paper within a time period to be fixed by the Court, fails to do so; where the petition appears to be barred by any law; where it is not filed in duplicate or where the petitioner fails to comply with the provisions of Rule 9.

9. The arguments advanced by learned counsel for the petitioner are without any merit. The instant rent petition has been filed for non-payment of rent for the subsequent period. There is no bar for filing the rent petition for recovery of rent or with regard to arrears for the subsequent period and such petition is not barred by principle of *res judicata*. Even if it is barred by principle of *res judicata*, even then the rent petition cannot be rejected because for deciding the application under Order 7 Rule 11 CPC,

only averments in the petition are to be seen and not more than that. In case, plea of principle of *res judicata* is taken, then Court can decide the said issue only after taking the documentary evidence into consideration but not on the basis of mere averments. In case **Suraj Lamp (supra)**, it is held by Hon'ble Supreme Court that no immovable property can be legally transferred or conveyed through a General Power of Attorney, agreement to sell or a Will. Thus, immovable property can be legally and lawfully transferred or conveyed only by way of a registered deed of conveyance. This authority is not applicable to the instant case, as this authority deals with a completely different issue. In case **Gokul Anand (supra)**, the issue was with regard to execution of transfer deed of immovable property on the basis of Power of Attorney. The High Court of Kerala held that Power of Attorney, although executed in a foreign country and notarized, still requires registration. In case **Manik Majumder and Others vs. Dipak Kumar Saha (Dead) through LRs and others – Law Finder Doc Id # 2106397**, it is held by Hon'ble Apex Court that Power of Attorney is not a compulsorily registrable document when it is duly notarized. It carries the presumption of being valid in view of Section 85 of Evidence Act. Registration of a Power of Attorney is optional. Thus, Power of Attorney requires registration only when immovable property is transferred by way of Power of Attorney.

10. Para no.9 of General Power of Attorney (Annexure P-5), on the basis of which Manjit Singh has filed the petition, reads as under :-

“9. To appear and act before any office/officers/courts whether civil, criminal, revenue or misc. in case of any disputes arising out

of the above said property, to give all such applications, forms, statements, bonds, affidavits, indemnity bonds, deeds, etc. etc. and to submit them in the office/s concerned, to compromise, compound and withdraw all such cases, to refer the cases to arbitration, to confess judgement, to engage any advocate/pleader for the proper conduct of such cases to sign and verify all such complaints/suits to file appeals, reviews, revisions, writ petitions against any order or decree up to the highest court of law in India, to set the decree to apply for and obtain the copies of judicial/civil records and to refund of the court fees and non-judicial stamps and complete all formalities, under his signatures.”

11. A perusal of above clause in the General Power of Attorney shows that it is specifically mentioned therein that Attorney holder is authorized to appear and act in civil, criminal, revenue or miscellaneous disputes arising from the above said property and is duly authorized to file the petition. In the earlier case, petition was filed by Attorney holder in his own name. Now, it is filed by the landlady through her constituted Attorney holder. The case of the petitioner does not fall under any of the clauses of Order 7 Rule 11 CPC. The suit is not barred by any law.

12. In view of what has been discussed above, I do not find any illegality in the order dated 19.09.2023 (Annexure P-4), passed by the Court of learned Rent Controller, Chandigarh, whereby the application under Section 14 of the Rent Act read with Order 7 Rule 11 CPC (Annexure P-1), filed by the petitioner, has been dismissed. The said order has been passed

in accordance with law. Accordingly, the revision petition, being devoid of any merit, is hereby dismissed.

13. Pending applications, if any, shall stand disposed of along with this judgment.

October 05, 2023 (GURBIR SINGH)
monika JUDGE

Whether speaking/reasoned ?	Yes.
Whether reportable ?	Yes/No.