

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(i) CR-360-2017 (O&M)

Ram Gopal ...Petitioner

Versus

Rekha Tyagi ...Respondent

(ii) CR-867-2017 (O&M)

Som Nath ...Petitioner

Versus

Rekha Tyagi ...Respondents

Date of Decision: April 22, 2024

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Divanshu Jain, Advocate
for the petitioner (in CR-360-2017).

Mr.Vinay Pandey, Advocate
for the petitioner (in CR-867-2017).

Mr.Amandeep Vashisht, Advocate
for the respondent.

ARCHANA PURI, J.

These are two revision petitions filed to challenge the concurrent findings of learned Rent Controller and Appellate Authority, passed in two ejectment petitions, thereby, ordering and affirming, eviction

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of the petitioners Ram Gopal and Som Nath, from two adjoining shops.

There are identical facts in both the petitions. As such, the facts, germane to be noticed, are as follows:-

That, the respondent-landlady filed eviction petition, vis-a-vis, two adjoining shops, to evict petitioners-tenants Ram Gopal and Som Nath respectively, on the ground of non-payment of arrears of rent @ Rs.4000/- per month, since 05.06.2003. However, as she could not claim arrears of rent more than three years, as such, she confined the arrears of rent for the last three years i.e. 01.02.2011 to 31.01.2014, plus interest.

Besides the aforesaid ground, qua both the shops, the landlady also took the ground of requirement of the shop for bonafide personal use to run boutique, as she does not have an other property in her possession, which is more suitable place for the boutique purposes.

In the petitions, it was asserted that the shops in question were in possession of the respective tenants previously under Sh.Pushkar Dutt Tyagi, who was father-in-law of the present respondent-landlady and who had since expired. She became the owner of the demised shops by virtue of Lok Adalat Award dated 23.11.2013. Many a times, she requested the tenants to pay the arrears of rent and vacate and handover the actual possession of the shops. She also served notice dated 09.01.2014 upon the tenants, but to no heed. Hence, the ejectment petitions.

However, in the respective replies, the petitioners-tenants resisted the claim of the landlady. They admitted about the shops in question, having rented out by Sh.Pushkar Dutt Tyagi. They also asserted

about Rekha Tyagi to be not having a right to file and maintain the petitions. Also, they asserted about the monthly rent to be Rs.250/-, since 1988, inclusive of house tax extra and they had paid the rent to Sh.Pushkar Dutt Tyagi and deposited upto 25.12.2008, vide challan No.77, dated 24.12.2008, in the Court in a rent petition filed by Animesh Tyagi, which was decided on 25.02.2011. They denied about Rekha Tyagi to be the landlady of the shops in question and also asserted about her to be having no legal necessity for her personal use. The alleged decree/Award, if any, was got suffered only to create false grounds.

Issues were framed and evidence was adduced by the rival parties.

On appraisal of the evidence, brought on record, both the petitions were allowed and the ejectment was ordered of the respective tenants.

To challenge the ejectment orders, respective appeals were filed by both the tenants Ram Gopal and Som Nath and vide judgments dated 21.11.2016, learned Appellate Authority had dismissed both the appeals.

Feeling aggrieved, the revision petitions in hand, were filed.

Learned counsel for the parties heard.

So far as, the relationship of landlady and tenants between the parties to the lis is concerned, the same was denied by both the petitioners-tenants. Though, they admitted about the shops having rented out to them by Sh.Pushkar Dutt Tyagi, but denied about present respondent Rekha Tyagi, to have become owner and in that capacity, being landlady. However, suffice to consider the shops in question, having fallen to the share of Rekha Tyagi,

by way of family settlement, on the basis whereof, Award was passed by learned Lok Adalat on 23.11.2013, copy whereof is Ex.A2. Thereupon, Rekha Tyagi-landlady, had issued notice dated 09.01.2014, copy whereof is Ex.A3, thereby, intimating both the tenants about manner of herself stepping into the shoes of the previous landlord by virtue of settlement, which culminated into Award passed by Lok Adalat on 23.11.2013. Further therein, she had asked the tenants to make payment of arrears of rent and also to handover the vacant possession of the demised shops, while asserting her personal necessity to run boutique, in the premises in question i.e. both the shops. Reply to the said notice was filed, copy whereof is Ex.A5.

Very appropriately, both these documents have been considered by learned Courts below, to conclude about Rekha Tyagi to have become the owner of the shops in question and also about due intimation, having given to the tenants, to whom by virtue of notice, she had apprised about they being in arrears of rent and her bonafide need of the demised shops.

Furthermore, to rule out any kind of dispute between legal heirs of Sh.Pushkar Dutt Tyagi and the tenants, making payment of rent, learned Courts referred to the cross-examination of the tenants, when they stepped into witness box, in the respective ejectment petitions, wherein, they have denied about any other legal heir, asserting or claiming arrears of rent or at any point of time, claiming ownership of the demised shops.

Learned Rent Controller and Appellate Authority appraised the evidence in correct perspective to conclude about the ownership of the demised shops by Rekha Tyagi, on the basis of the Award dated 23.11.2013

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and also about the tenants, not being within their right to dispute about the family settlement, on the basis whereof, aforesaid Award was passed.

Considering the aforesaid, learned Rent Controller and Appellate Authority had rightly concluded about there to be existing relationship of landlady and tenants between the parties to the lis and respondent-landlady to be having locus standi to file the ejectment petitions.

So far as, arrears of rent is concerned, from the evidence adduced, it stands amply established that the rent was Rs.250/- per month and it was paid upto 25.12.2008, as held, in the petition filed by Animesh Tyagi, who is husband of Rekha Tyagi, which was decided on 25.02.2011. Even, the tenants have asserted about rent to be Rs.250/- per month. In their cross-examination, both the tenants have admitted that the rent having not so paid, even at this rate, on which account, it was rightly concluded by learned Courts, about both the tenants to be in arrears of rent, for the period 01.02.2011 to 31.01.2014.

Since, the relationship of landlady and tenants has been denied, therefore, the petitioners-tenants had foregone their right to call upon the Rent Controller to assess the rent and grant an opportunity to pay the arrears of rent. Very rightly, learned Courts had held about the Rent Controller to be under no obligation to assess the provisional rent, as a tenant denying the relationship of landlady and tenant, asserts a positive right, not to tender rent and therefore, cannot fall back upon the ratio in ***Rakesh Wadhawan's case***.

Rakesh Wadhawan vs. Jagdamba Industrial Corporation, 2002(1) RCR (Rent) 514

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Where a tenant proceeds to dispute the locus standi or ownership of the landlord and thereupon, denies the relationship of the landlord and tenant, such a tenant, in essence, asserts a positive plea of refusal to tender rent. Whether, such a tenant would be entitled to protection of Section 13 of the Act, as interpreted by the Hon'ble Supreme Court in ***Rakesh Wadhawan's case (supra)***, has been answered in a numerous judgments. Beneficial reference is made to the ***Ramanand Shashtri vs. Gian Singh, 2003(1) RCR (Rent) 735*** and the relevant observations, made therein, are as follows:-

*"I have thoughtfully considered the submissions made by the learned counsel for the tenant-petitioner and am of the view that the same are devoid of merit. The first submission that the tenant-petitioner was entitled to an order of assessment by the Rent Controller in terms of the law laid down by the Supreme Court in the case of **Rakesh Wadhawan (supra)** would not require any detailed consideration because in cases where the tenant disputes the relationship of landlord and tenant it is not expected of the Rent Controller to pass an assessment order of rent directing the tenant to pay that rent. In such cases, exercise to be taken by the Rent Controller would be futile and would rather go contrary to the stand of the parties. After all framing of assessment order is not a mere ritual by the Rent Controller that in every case the Rent Controller must pass such an order. Moreover, even if the Rent Controller passes such an order and the tenant maintains his stand of denying the relationship then he cannot be asked to pay the rent. It would also be unjust that the tenant would first get the finding of subsisting relationship and then deposit the rent. Such a course would also be unfair and unjust to the landlord-respondent. Therefore, I have no*

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hesitation in rejecting the first argument raised by the learned counsel."

Similarly, it was so held in ***Yash Pal Singh' case, Narinder Singh's case*** and ***Jasbir Singh's case***, which also found reference in ***Mrs.Preeti vs. Manmohan Singh and another, CR-3539-2006, decided on 07.01.2008.***

In the case in hand, as already observed aforesaid, ample evidence is coming forth, about the respondent-landlady Rekha Tyagi, to have stepped into the shoes of previous landlord as rights of ownership had flown to her, on the basis of Award passed by learned Lok Adalat, on the basis of family settlement earlier reached. Relating to Rekha Tyagi having become the landlady, due notice was also given to the tenants, to which they had filed reply. Consequential cross-examination was also conducted, vis-a-vis, rights having flown to Rekha Tyagi and none of the legal heirs of Sh.Pushkar Dutt Tyagi, having questioned her capacity, being landlady or claimed ownership in the shops in question.

Considering the evidence, so brought on record, learned Courts have rightly concluded about there to be existing relationship of landlady and tenants, between the parties to the lis and thus, on this account, the objection, as to the locus standi of the respondent-landlady to file the ejectment proceedings, was therefore a malafide attempt, to evade the duty to pay the rent, to deprive the landlady of the rent. Thus, the plea of tenants,

Yash Pal Singh vs. Vijay Kumar, 2004(1) RCR (Rent) 718
Narinder Singh vs. Sarabjit Since, 2006(2) RCR (Rent) 226
Jagdish Singh vs. Mohan Lal, 2004(2) RCR (Rent) 114

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is therefore, hollow and lacks bonafide. Such being the observation coming, there was no necessity for assessment of the provisional rent and precisely, on this account, learned Courts below, concluded about the tenants, liable to be ejected, on the ground of arrears of rent. The findings, on this count, as such, are affirmed.

Now, coming to the second ground of ejectment, which is requirement of the two adjoining shops for bonafide personal necessity. It is the categoric claim of the respondent-landlady about the personal necessity of two adjoining shops to run a boutique. However, in the respective replies to the ejectment petitions, it is claimed that other commercial property bearing No.B-4/2132/7/2173/D/2202 is available with the landlady together with her husband, which has been concealed. It is now submitted by learned counsel for the petitioners that landlady possesses numerous other properties and it is fatal to her claim for personal necessity, as amiss has been given to the said properties.

However, it is pertinent to mention that in the petitions, it has been categorically stated by the landlady that she is not occupying any other non-residential building, in the urban area i.e. corporation limits of MC, Yamunanagar, nor has vacated any such building, without sufficient cause, after the commencement of 1949 Act.

Learned counsel for the petitioners have made reference to various documents, which have been tendered into evidence by the tenants, thereby, depicting about the numerous properties, owned by landlady and her family. They further referred to the assessment register, with regard to

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property bearing No.B-4/2132/7/2173/D/2202, copy whereof is Ex.D3 and the same reflects Animesh Tyagi and Rekha Tyagi, as owners of the said property.

Before proceeding further, it is appropriate to make mention that '**need**', so projected by the landlady, ought to be presumed to be correct and genuine. Learned Rent Controller shall not proceed on the presumption that the 'need' projected is not bonafide.

Learned Appellate Authority in the impugned judgment dated 21.11.2016, has made elaborate reference to the documents to Ex.D3 to Ex.D9. As per copy of the assessment register of the Municipal Corporation for the year 2011-12, copy whereof is Ex.D2, relating to the property bearing No.B5/1289, Avinash Tyagi and Pushkar Dutt, are shown to be the owners of the property. Likewise, assessment register entry of property bearing No. B-4/2132/7/2173/D/2202, the mention whereof, is made in reply to the main petitions, reflects the ownership of the property in the names of Animesh Tyagi and Rekha Tyagi. Ex.D4 relates to the property bearing No.B-4/2131/F, of which Animesh Tyagi is the owners. Ex.D5 relates to property B-4/2131/D. Herein also, Animesh Tyagi and Avinash Chander are owners of this property. As per copy of the assessment register Ex.D6, the landlady is recorded to be joint owner of the residential property, with Animesh and Akshay. In the copy of assessment register Ex.D7, Rekha Tyagi is not reflected to be owner of the property and the names of owners are Animesh Tyagi and Akshya Tyagi. Likewise Ex.D8 and D9 are the property tax bills, which are also in the joint names of Animesh Tyagi, Akshya Tyagi and

Rekha Tyagi.

Considering the aforesaid documents, it has been appropriately concluded by learned Courts below about Rekha Tyagi to have never been found to be exclusive and sole owner, in occupation of any commercial property to meet her requirement. She has specifically so pleaded in the petition and also in her affidavit, which was tendered into evidence as Ex.AW1/A. More particularly, it is pertinent to mention that in the Lok Adalat Award dated 23.11.2013, in the headnote of the suit, there is mention about the plaintiff Akshya Tyagi, to be owner of half share of the building bearing No.B-4/2132/7/2173/D/2202, the reference whereof, was made by the tenants, in their respective replies.

From the Award, one cannot decipher as to whether, this half share, related to Rekha Tyagi or of her husband Animesh Tyagi, who are reflected, as owners in the assessment register entry of the year 2011-2012, copy whereof is Ex.D3. It was incumbent upon the tenants to have clarified such situation, so as to facilitate knowing about the right of the landlady in the said property and the occupation of the same by her. However, no such evidence has been adduced. Rather, no cross-examination qua this property has been conducted. Even, the tenants in the minimum, to dislodge the claim of the landlady, could have produced the copy of the petition, relating to which Award dated 23.11.2013 was passed, but they did not do so. Nowhere cross-examination was conducted qua any of the properties, of which Ex.D2 to Ex.D9 are the documents, tendered into evidence, to substantiate the exclusive possession of the landlady in the same.

In the given circumstances, the question of some of the properties of the landlady lying vacant or being in her possession, as such, does not stand established and the suitability as asserted, could have arisen thereafter. Properties owned by multiple persons, more particularly, when not established to be in exclusive possession of the landlady, would obviously be inconvenient, in the minimum, to initiate business, on the basis of the projected '**need**'. It is quite obvious that the other co-sharers, even be family members, may not agree for excessive user of the joint property by the respondent-landlady and they may be interested to let out the same, to make themselves entitled to proportionate rent of the said properties.

In the light of the aforesaid discussion, even if, husband of the landlady, may be in possession of the properties, this *ipso facto*, cannot be considered to be in possession of the respondent-landlady, having an option to initiate her business of boutique in the same.

Furthermore, learned counsel for the petitioners have also submitted that the property, which was earlier rented out by Rekha Tyagi and her family members to M/s Amar Tex Industries, was also got evicted, by way of filing of the petition and copy of the ejectment order is Ex.D15. It was during the pendency of the appeals before learned Appellate Authority that this property was rented out, by virtue of a lease deed, copy whereof is Annexure P-5. An application for additional evidence was filed by the petitioners-tenants and the same was dismissed, on the same very day, when the appeals were decided by learned Appellate Authority, relating to the demised shops. This order is also under challenge in the present revision

petitions.

No doubt, the lease deed dated 15.10.2015 was executed qua the ejected property, but however, it was also the joint property and as such, stood on the same footing, as the other properties and therefore, the eviction of the said property and renting out further, by virtue of lease deed, in question, would not matter much, as it was joint property and not established to be in exclusive possession of the respondent-landlady.

Considering the same, the dismissal of the application for additional evidence, as such, matters not much.

In this backdrop, looking at the testimony of respondent-landlady, her need has correctly been held to be genuine and bonafide. Learned Rent Controller has correctly passed the ejectment orders on two pleaded grounds and the same have been affirmed by learned Appellate Authority. In these circumstances, the impugned orders warrants no interference, while exercising revisional jurisdiction.

Hence, both the revision petitions are hereby dismissed.

April 22, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No