

CR-371-2024

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(130)

CR-371-2024

Date of decision: - 06.08.2024

Poonam Rani and another

....Petitioners

Versus

Ashok Kumar Verma

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Rakesh Gupta, Advocate, and
Ms. Manvi Arora, Advocate, for the petitioners.

VIKAS BAHL, J. (ORAL)

1. Present revision petition has been filed under Article 227 of the Constitution of India read with Haryana Urban Rent Restrictions Act, 1973 (for short 'Act of 1973') for setting aside the order dated 03.11.2023 (Annexure P-1) passed by the Additional District Judge, Kaithal in Civil Appeal No.119 of 2022 and for restoration of the order dated 26.10.2022 (Annexure P-7) passed by the Civil Judge (Senior Division), Kaithal.

2. Brief facts of the case are that the respondent herein had filed an application for ejectment under Section 13 of the Act of 1973 (as amended up to date) against the present petitioners with respect to a double storey residential house, on the plea that the tenanted premises was earlier owned and possessed by petitioner No.1 herein and was sold to Sangeeta Rani daughter of the respondent herein for a consideration of Rs.8,70,000/- vide registered sale deed dated 12.01.2017 and the present petitioners were tenants under the landlady, namely, Sangeeta Rani and

the said Sangeeta Rani had further transferred the ownership of the tenanted premises in favour of the respondent, vide registered transfer deed dated 30.10.2017. It was further pleaded that since the respondent herein had become owner of the tenanted premises and the present petitioners were occupying the same as tenants, thus, they became tenants of the respondent. The eviction of the present petitioners was sought on the ground of non-payment of rent and also on the ground of personal necessity.

3. The written statement was filed in the said case on behalf of the petitioners, which is annexed as Annexure P-3. The replication was also filed to the said written statement and a copy of the same has been annexed as Annexure P-4. Thereafter, the application under Order 7 Rule 11 CPC was filed for rejection of the plaint by the petitioners and the said application has been annexed as Annexure P-5. The Rent Controller, Kaithal, vide order dated 26.10.2022 has allowed the said application.

4. On an appeal filed against the said order by the respondent, the 1st Appellate Court vide a detailed order dated 03.11.2023 (Annexure P-1) allowed the same and dismissed the application filed by the petitioners under Order 7 Rule 11 CPC. While allowing the said application, the 1st Appellate Court had observed that the Rent Controller, Kaithal had erred by relying upon the defence of the respondent in order to decide the application under Order 7 Rule 11 CPC, inasmuch as, it was settled law that while deciding an application under Order 7 Rule 11 CPC, it is the averments made in the plaint which are required to be

considered and not the averments made in the written statement. In the said regard, reliance was placed upon a judgment of the Hon'ble Supreme Court in case titled as “Soumitra Kumar Sen Vs. Shyamal Kumar Sen and others”, reported as **2018(2) R.C.R. (Civil) 223 (SC)** and other judgments. It was further observed that although, in the sale deed in favour of the landlord, there was a recital of delivery of possession, however, in view of the fact that the petitioners herein were claiming to be in possession, the question as to whether the petitioners herein were in possession as tenants or were in unauthorized occupation of the property in question had to be decided by the Rent Controller and the said plea could not be taken into consideration while deciding the application under Order 7 Rule 11 CPC.

5. Learned counsel for the petitioners has submitted that once the said sale deed relied upon by the landlord contained a recital to the effect that the possession had been delivered to the respondent herein, the same would show that he was in possession and thus, an application for ejectment of the petitioners could not have been filed.

6. This Court has heard learned counsel for the petitioners and has perused the paper-book.

7. The order dated 03.11.2023 passed by the 1st Appellate Court is legal and valid. It has rightly been observed by the 1st Appellate Court that it is the averments made in the plaint along with the documents annexed with the plaint, which at best could be taken into consideration for deciding the application under Order 7 Rule 11 CPC and that the

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averments made in the written statement or the defence of the defendants/petitioners in the present case were not to be taken into consideration for the said purpose. The argument raised on behalf of the petitioners on the aspect of possession also does not call for setting aside of the impugned order, inasmuch as, it is the case of the petitioners that they are in possession and thus, the question as to whether they are in possession as owners or as tenants is a question which is to be decided during the course of trial. It is the case of the present respondent, in the petition for ejectment under Section 13 of the Act of 1973, that the petitioners herein are tenants and thus, eviction has been sought on the ground of non-payment of rent and also on the ground of personal necessity. For the purpose of adjudicating an application under Order 7 Rule 11 CPC, it is the said averments in the plaint which have to be taken into consideration. Thus, there is no merit in the application filed by the petitioners under Order 7 Rule 11 CPC and the impugned order vide which the said application has been dismissed is well reasoned and deserves to be upheld.

8. Keeping in view the above-said facts and circumstances, this Court is of the opinion that the impugned order passed by the Additional District Judge, Kaithal dated 03.11.2023 is legal and does not call for any interference and the present civil revision petition being meritless, deserves to be dismissed and is accordingly dismissed.

August 06, 2024*naresh.k***(VIKAS BAHL)
JUDGE**

Whether reasoned/speaking?
Whether reportable?

Yes
Yes