

**CR-1912-2024****-1-****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****(123)****CR-1912-2024****Date of decision: - 28.08.2024****Brij Mohan Gupta****...Petitioner****Versus****Manoj Kumar and another****.....Respondents****CORAM : HON'BLE MR. JUSTICE VIKAS BAHL**

Present:- Mr. Varun Goyal, Advocate,
for the petitioner.

**********VIKAS BAHL, J. (ORAL)**

1. This is a civil revision petition under Article 227 of the Constitution of India for setting aside the impugned judgment and decree dated 04.12.2023 (Annexure P-4) passed by the Civil Judge (Junior Division), Jalandhar, whereby the civil suit for restitution of the possession of shop in question has been decreed under Section 6 of the Specific Relief Act, 1963.

2. Present revision petition has been filed by defendant No.2, who is stated to be a lis pendens tenant of respondent No.2/defendant No.1.

3. Brief facts of the present case are that the plaintiff/respondent No.1 (hereinafter referred to as "respondent No.1") had filed a suit for restitution of the possession of the shop in question as

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shown in the site plan and bounded on East: Property of Avtar Singh, West-Road, North-Tea Shop of Avtar Singh and South-Shop of Hans Raj Aggarwal, with a further direction to the defendants to deliver and handover the physical vacant possession of the shop to the plaintiff and for permanent injunction for restraining the defendants from further alienating/transferring the possession of the demised shop in question. The said suit was instituted on 18.10.2012 as is apparent from a perusal of the impugned order (Annexure P-4) and subsequently the plaint was amended and as per the averments in the amended plaint (Annexure P-1), it was stated that the plaintiff had been running a tea shop for the last more than four years and prior to the same, the said shop was being run by his father as a tenant since 60 years and after the death of his father, the plaintiff along with his brother Sanjay Kumar alias Sanju had inherited the tenancy and continued running the shop. It was further alleged that four years prior to the institution of the said suit, the brother of the plaintiff, namely, Sanjay Kumar @ Sanju had died and the plaintiff came in the exclusive possession of the shop as a tenant and after the death of the said Sanjay Kumar, his wife, namely, Kiran had left Jalandhar Cantt and had started living with her parents at Amritsar and never came back to the matrimonial home. It was pleaded that the plaintiff had been regularly paying the rent to the landlord, namely, Puran Singh-respondent No.2/defendant No.1 (hereinafter referred to as “defendant No.1”) and he had been issuing the receipts regarding the same. It was averred that on 10.09.2012, at midnight, defendant No.1 after entering

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into conspiracy with Kiran, wife of Sanjay Kumar alias Sanju Kumar broke open the locks of the shop and took away all the articles lying therein. On 11.09.2012 a complaint was filed by the plaintiff to the SHO, P.S. Jalandhar Cantt but no action had been taken to arrest the defendant on account of political interference. In the amended plaint, paras 9-A to 9-E were incorporated in order to bring to the notice of the Court the subsequent facts, which had taken place during the pendency of the said suit and in the said paragraph, it had been stated that in violation of the order passed by the trial Court dated 30.11.2013, defendant No.1 had transferred the possession to defendant No.2 and accordingly, defendant No.2, who was a lis pendens tenant was also impleaded as a party.

4. Defendant No.1 had filed a written statement (Annexure P-2) and in the said written statement, the plea taken by defendant No.2 was that the demised premises had been taken on rent by Sanju Kumar, who was brother of the plaintiff and after the death of Sanju Kumar on 08.10.2008, his wife Kiran, who was class-1 legal heir had become tenant. Although, the said plea was taken, but it was further stated that the electricity connection was taken by Sanju Kumar in the name of his father Mohan Lal with the consent of defendant No.1. Another contradictory plea taken in the written statement was to the effect that in para 8 of the written statement, it was pleaded that after the death of Sanju Kumar his wife Kiran was harassed by the plaintiff and she had shifted to her parental house at Amritsar, however, in the later part of the said paragraph, it was said that at the time of vacation of the demised shop, the



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said Kiran along with the plaintiff had approached the defendant to sign the receipts in token of receiving the rent up to date and the same was signed in good faith. Relevant para No.8 of the said written statement is reproduced hereinbelow: -

“8.Sanju Kumar also agreed to increase the rent @ 10% after every years. Said Sanju Kumar was brother of the plaintiff. Later on Sanju Kumar died on **08.10.2008** and his wife Smt. Kiran being the Class-I legal heir became tenant in the demised shop under the defendant on the same terms and conditions. **It is not out of place to mention here that electric connection was taken by Sanju Kumar in the name of his father Mohan Lal with the consent and permission of the defendant. After the death of Sanju Kumar, his wife Kiran was harassed by the plaintiff and his family members, as such, she shifted to her parental house at Amritsar and vacated the demised shop and handed over the vacant possession to the defendant as there was no body of the legal heirs of Sanju Kumar to run the shop and the shop was lying closed. An affidavit to this effect was also executed by Smt. Kiran W/o Sanju Kumar in favour of defendant at the time of vacating the shop and handing over the vacant possession to the defendant. The possession was handed over to the defendant on 10.09.2012. However, she executed the affidavit at Amritsar on 07.09.2012 and on 10.09.2012 she came to Jalandhar and got attested the affidavit and handed over the keys of the demised shop to the defendant. The defendant is an illiterate person and can only sign in English. Otherwise, the defendant is not conversant with English language and cannot read and write English. At the time of vacation of the demised shop, Smt. Kiran alongwith her brother-in-law i.e. Manoj Kumar, present plaintiff, approached the defendant to sign the receipts in**



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token of receiving the rent upto date. Smt. Kiran had brought with her the printed receipts which were already written in English and the defendant in good faith signed the said receipts.....”

5. The trial Court vide judgment and decree dated 30.03.2018 (as is apparent from para 30 of the order dated 04.12.2023) had decreed the case against defendant No.1 and defendant No.2 had been proceeded against ex parte, however, on an application under Order 9 Rule 13 CPC filed by defendant No.2, the same was allowed and the suit was restored to its original number. The said defendant No.2 had also filed written statement on 02.03.2020, in which, in para No.5 of the preliminary objections, it had been stated that defendant No.2 had taken the premises in question from defendant No.1 vide agreement dated 31.08.2013. Thus, as per the said plea, defendant No.2 had taken the possession of the premises after the date of institution of the case, which was 18.10.2012.

6. The trial Court vide judgment and decree dated 04.12.2023 had allowed the suit of the plaintiff and granted the relief of possession and further directed the defendant No.1 to handover vacant possession of the suit property to the plaintiff immediately. The trial Court on the basis of the pleadings had vide order dated 23.01.2014 framed the following issues

- “1. Whether the plaintiff is entitled for restitution as prayed for ?OPP*
- 2. Whether the plaintiff is entitled for permanent injunction as prayed for?OPP*
- 3. Whether the suit is without any cause of action?OPD*

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4. *Whether the suit is not properly valued for the purpose of court fee and jurisdiction?OPD*
 5. *Whether the plaintiff has come to court with unclean hands/OPD*
 6. *Relief.”*
7. Issues No.1 and 2 were held in favour of the plaintiff and against the defendants. While deciding the said issues, the following factors were noticed by the trial Court:-
- (i) Defendant No.1 had during the course of his cross-examination admitted the tenancy in favour of the father of the plaintiff Mohan Lal @ Kashmiri Lal.
 - (ii) The rent receipts (Ex.P10 and Ex.P11), which were in the name of Mohan Lal @ Kashmiri Lal, father of plaintiff, were stated to be duly proved on record and the said facts were taken into consideration to observe that the plea raised by the plaintiff to the effect that his father was the tenant over the property initially was prima facie proved.
 - (iii) Ex.P7, Ex.P8 and Ex.P9, which were the rent receipts executed in the year 2009, showing that the rent has been received from Manoj Kumar were also duly proved on record and the same were shown to be signed by defendant No.1. It was further observed that although defendant No.1 had taken a plea of forgery, but there was no evidence produced by the defendant No.1 to prove the said plea and it was thus observed that the plaintiff had even proved to be a tenant of

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the suit property.

- (iv) Reference was also made by the trial Court to the cross-examination of defendant No.2, who was examined as DW-2 and had admitted during his cross-examination the tenancy of Mohan Lal @ Kashmiri Lal over the suit property.
- (v) It was also noticed by the trial Court that the plea raised by defendant No.1 to the effect that the plaintiff had been harassing Kiran after her husband passed away due to which she had to leave Jalandhar and had shifted to Amritsar and plea of defendant No.1 to the effect that the plaintiff along with Kiran came to handover the possession of the suit property on 10.09.2012 was contradictory. Even the contention of the defendant No.1 that his signatures were taken on blank documents and were later on converted into rent receipts dated 28.03.2009 (Ex.P8) and dated 25.01.2009 (Ex.P9) was also rejected and it was stated that the said receipts were signed in English and thus, even the plea of illiteracy taken was also found to be false. It was observed that defendant No.1 had also taken a plea that he had not taken any rent from Kiran and thus, the question of his signing on blank stamp documents could not arise. It was further observed that there were revenue stamps which were there in the said Ex.P7 to Ex.P9 and the signatures were across the revenue stamps and it was impossible to believe

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that a person could have signed across them not knowing the contents. It was thus observed that the stand of the defendant was contradictory and failed to inspire confidence.

- (vi) The trial Court had also taken into consideration the fact that Kiran had acted in connivance with defendant No.1.
- (vii) With respect to the identity of the shop, the trial Court had observed that the boundaries of the shop in question had been specifically mentioned in the suit and the same were not in dispute and thus, it was proved that the suit pertains to the same shop which was earlier in possession of father of the plaintiff and thereafter in possession of defendant No.2. On the basis of the evidence on record, it was observed that it was proved that the plaintiff was a tenant in the disputed shop and had been illegally dispossessed by defendant No.1 in connivance with Kiran.

8. Issues No.3, 4 and 5 were stated to be not pressed and were thus, decided in favour of the plaintiff and against the defendant.

9. Under Issue No.6, accordingly the suit was decreed under Section 6 of the Specific Relief Act, 1963 and a direction was given to the defendants to handover the vacant possession of the suit property to the plaintiff immediately. It is the said order dated 04.12.2023, which has been sought to be challenged in the present revision petition by defendant No.2, who as has been stated hereinabove, is a lis pendens tenant.

10. Learned counsel for the petitioner has submitted that in the



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present case, a perusal of the cross-examination of PW-1 Manoj Kumar would show that he was not in possession of the premises in question and once he was not in possession of the premises in question, then, the question of him being dispossessed does not arise. The relevant portion of the evidence of PW1 which has been highlighted by learned counsel for the petitioner is reproduced herein below: -

*“It is correct that defendant no.2 is tenant in property in question under the defendant no.1. I do not know if on 25.04.2000 written rent agreement was executed between my brother Sanju Kumar and defendant no.1. Sanju Kumar had paying the professional tax to Cantonment Board Jalandhar Cant. **volunteered I was also paying the professional tax.** I had filed a contempt petition against defendants which was dismissed in the court of Sh. Gagandeep Singh the then CJSD Jalandhar. I do not know if I had preferred any appeal against the order of dismissal of the contempt petition. **It is wrong to suggest that after the death of my father, my brother Sanjay was running the shop.** I was cross examined in the criminal complaint filed by me against defendant no.1. I do not remember if I had mentioned in my statement Ex.D1 that after the death of my father, my brother Sanjay was running the shop. Attention of the witness is drawn towards his statement Ex.D1 where it is so mentioned from point A to A1. **My statement which I have given today in the court qua running of shop by me and Sanjay Kumar is correct and the statement given in Ex.D1 qua running of shop by Sanjay Kumar only is my incorrect statement.**”*

Learned counsel for the petitioner has further submitted that on the basis of the above admission, the judgment and decree passed by

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the trial Court deserves to be set aside and the suit filed by the plaintiff deserves to be dismissed.

11. This Court has heard learned counsel for the petitioner and has perused the paper-book alongwith the record of the trial Court, which had been summoned by the Co-ordinate Bench of this Court vide order dated 30.05.2024 and is of the opinion that the present revision petition is meritless and deserves to be dismissed for the reasons detailed herein after.

12. The above mentioned reasons which have been given by the trial Court for deciding the issues, more so, issues No.1 and 2 in favour of the plaintiff and against the defendants, have not been shown to be illegal or perverse or contrary to the record. The observation of the trial Court to the effect that defendant No.1 in his cross-examination had admitted the tenancy of the father of the plaintiff-Mohan Lal @ Kashmir Lal and even defendant No.2 had also admitted the said fact in his cross-examination and also the fact that the rent receipts (Ex.P10 and Ex.P11) were proved on record which showed that rent was paid by Mohan Lal @ Kashmiri Lal, father of the plaintiff and the finding of the trial Court to the effect that father of the plaintiff, namely, Mohan Lal @ Kashmiri Lal was a tenant over the property has not been shown to be illegal or perverse or contrary to the record. Thus, the plea raised by the plaintiff in the suit to the effect that earlier his father was a tenant has been duly proved on record. Even the finding of the trial Court with respect to rent receipts (Ex.P7, Ex.P8 and Ex.P9), which are of the year 2009 and were executed

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by the defendant No.1 after the date of the death of brother of the plaintiff, who admittedly died on 08.10.2008, have not been shown to be perverse or illegal . The said rent receipts (Ex.P7 to Ex.P9) were signed by defendant No.1 and the signatures were in English and a part of the said signatures were also across the revenue stamps and thus, the said receipts had been rightly relied upon by the trial Court to come to a conclusion that the plaintiff who was the son of Mohan Lal @ Kashmiri Lal, earlier tenant, had inherited the tenancy and after the death of his brother had become the exclusive tenant and had proved the rent receipt on record, which shows that he had paid the rent to defendant No.1. The plea of forgery/signatures on blank documents having been taken has rightly been rejected by the trial Court as there is no evidence on the said aspect.

13. Another aspect which clearly shows that a completely false and contradictory plea had been taken by defendant No.1 is the fact that as is apparent from the relevant portion of the written statement of defendant No.1 which has been reproduced herein above, in the initial part of the written statement, defendant No.1 had taken a plea that after the death of Sanju Kumar, brother of the plaintiff, his wife Kiran was harassed by the plaintiff and thus, she had shifted to her parental house at Amritsar from Jalandhar, whereas, in the subsequent part of the written statement, it had been stated that at the time of vacation of the demised premises, the plaintiff along with Kiran had gone to meet defendant No.1 and had taken the rent receipt from him. The death of husband of Kiran

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had taken place on 08.10.2008 and it is thus *prima facie* established that she had been residing at Amritsar and not at Jalandhar where the shop is situated. The question of her thus handing over possession to defendant No.1 on 10.09.2012 by executing an affidavit dated 07.09.2012 is apparently an act of collusion with the defendant and the plea raised by the plaintiff to the effect that initially father of the plaintiff Mohan Lal @ Kashmiri Lal was a tenant and thereafter, he along with his brother were carrying out the work and after the death of brother in the year 2008, it was the plaintiff, who was in exclusive possession of the shop in question, stands fully substantiated from the evidence on record. Moreover, when defendant No.1 had raised the plea that he had not taken any rent from Kiran, as she was a widow, in the written statement, then, the question of his signing blank receipts as sought to be projected by the defendant No.1 did not arise. Thus, the finding on all the issues of the trial Court are in accordance with law and deserve to be upheld.

14. The argument raised by learned counsel for the petitioner on the basis of the aforementioned piecemeal cross-examination of PW-1 also does not further the case of the petitioner. It is a matter of settled law that evidence in the whole has to be read. In the examination in chief, the plaintiff Manoj Kumar had specifically reiterated the fact that on 10.09.2012 at midnight, defendant No.1 after entering into conspiracy with Kiran had broken open the locks of the shop under occupation of the plaintiff and had taken away all the articles and regarding the same, he had made a complaint dated 11.09.2012 to the SHO Police Station,

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Jalandhar Cantt. and also to the Commissioner of Police, Jalandhar and the same were produced on record as Ex.P20 and Ex.P21. In the examination-in-chief, he further produced on record the rent receipts as Ex.P5 to Ex.P13, receipts for licence fee as Ex.P-14 & Ex.P15, Tax receipts as Ex.P16 and Ex.P17, professional tax receipts as Ex.P18 and Ex.P19 and even electricity bills stated to be paid by him as Ex.P2 to Ex.P4. It was also stated in the examination-in-chief that during the pendency of the suit, defendant No.1 had given the property to defendant No.2, which was illegal. Thus, reading the entire evidence of the plaintiff would support the case of the plaintiff. Even in the above cross-examination, which was highlighted by learned counsel for the petitioner, the plaintiff had specifically volunteered and stated that he was paying professional tax and had specifically denied the fact that after the death of his father, his brother Sanjay Kumar was running the shop. Even the statement given in Ex.D1 has been stated to be by the plaintiff to be incorrect and it has been reiterated by the plaintiff that the statement given by him in the present proceedings qua running the shop by him and Sanjay Kumar together is correct and thus, PW1 has explained his earlier statement made in the criminal proceedings. In the said circumstances, the above piecemeal reference to the statement of witness Manoj Kumar would not call for setting aside the well reasoned impugned judgment, which has been passed after taking into consideration the entire evidence, documents on record and also the evidence of the witnesses including the witnesses produced by the petitioner.

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15. It is also relevant to mention that the present petitioner is a lis pendens tenant and the present revision petition has not been filed by defendant No.1 who was the original landlord.

16. Keeping in view the above-said facts and circumstances, this Court is of the opinion that the impugned order dated 04.12.2023 (Annexure P-4) passed by the Civil Judge (Jr. Divn.), Jalandhar 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 28, 2024
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes
Yes