



529.

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. Civil Revision No.5043 of 2023 (O&M)
Date of decision: 01.04.2024

Gurcharan Singh Petitioner

Versus

Sunil Kumar Respondent

2. Civil Revision No.5436 of 2023 (O&M)

Ashok Kumar Petitioner

Versus

Sunil Kumar Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Ravinder Bangar, Advocate, for the petitioner(s).
Mr. Amandeep Singh Mann, Advocate, for the respondent.

GURBIR SINGH, J.

CM-1056-CII-2024 IN CR-5043-2023
CM-1044-CII-2024 IN CR-5436-2023

Applications seeking preponement have become infructuous
and disposed of as such.

CM-1057-CII-2024 IN CR-5043-2023
CM-1045-CII-2024 IN CR-5436-2023

Applications are allowed as prayed for. Annexures P-5 and P-6
are taken on record.

CM-15789-CII-2023 IN CR-5043-2023

CM-17073-CII-2023 IN CR-5436-2023

Delay of 4 days in filing Civil Revision No.5043 of 2023 and 2 days in Civil Revision No.5436 of 2023, is condoned.

Applications stand disposed of accordingly.

CM-15791-CII-2023 IN CR-5043-2023

CM-17075-CII-2023 IN CR-5436-2023

Applications are allowed, as prayed for.

Civil Revision Nos.5043 and 5436 of 2023

1. By this common judgment, two revision petitions i.e. Civil Revision No.5043 and 5436 of 2023 are being disposed of. Both have been filed by the respective tenants against the judgments of eviction passed by the courts below. However, for the sake of convenience, necessary facts for disposal of both the revision petitions are being discussed separately.

2. Civil Revision No.5043 of 2023

2.1 The respondent-landlord, namely, Sunil Kumar (hereinafter called, landlord) filed ejectment petition bearing CIS No.RP/23/2014 against the petitioner-tenant, namely, Gurcharan Singh (hereinafter called, tenant) under Section 13 of the Haryana Urban (Control of Rent & Eviction), Act, 1973 from shop bearing House Tax Unit No.691A/17 as per assessment register of M.C., Hansi, marked with letters NORP and shown with red colour in the site plan, with boundaries as mentioned in the heading of the plaint.

2.2 The case set up by the landlord is that he is the owner of shop, in dispute, which was earlier owned by his father, namely, Ram Kumar,

who expired in 1993. Thereafter, his properties were inherited by the landlord, his brother Surender Kumar, mother-Phoolwati and sisters-Meena and Anita. They entered into an oral family settlement, vide which, the property shown with blue colour and marked with letters BGEH including the shop, in dispute, fell to the share of the landlord and remaining property fell to the share of his brother. The landlord and his brother also got passed a decree with regard to property fell to their respective share in their favour on 14.01.2014 from the trial Court, Hansi in Civil Suit No.446-C of 2013. Thus, the respondent became owner of the shop, in dispute, since the date of oral family settlement.

2.3 The shop, in question, was given on rent to the tenant, for the purpose of Auto Electrician Work, by the father of the respondent-landlord, in the presence of landlord, in the year 1985, at the monthly rent of Rs.1,000/- excluding tax with an oral condition that the rent of the shop, in question, would be enhanced by 25% after every five years. Rent was mutually enhanced regularly by approximately 25%. Lastly, the rent was enhanced in the year 2010 and it was fixed at Rs.2,950/- per month. The tenant had paid the rent upto March, 2011 and thereafter, he failed to pay the rent. He had been in arrears of rent w.e.f. 01.04.2011 at the said rate. The landlord was in need of the shop for making a big showroom and to start a modern service station. Neither the respondent-landlord nor his son Hemant was having any other shop or property to start the business in urban

area of Hansi City or throughout India. The landlord has not got vacated any property from anyone since 1949.

2.4 Upon notice, the tenant contested the petition, filed written statement admitting that the respondent had been the owner of the shop, in dispute, from the date of passing of the decree in his favour. The tenant was not in arrears of rent. The need of the landlord was not genuine and bonafide. The tenant also filed counter-claim that the landlord had wrongly claimed rent w.e.f. 01.04.2011 @ Rs.2,950/- per month excluding house tax. So, the tenant moved an application for fixing provisional rent. Vide order dated 21.02.2015, the provisional rent was assessed by the court @ Rs.1,000/- per month w.e.f. 01.01.2011 to 31.12.2014. The total amount of Rs.57,840/- was calculated and said amount was tendered by the tenant to the landlord in court. However, it was contended that the tenant was only liable to pay rent for four months only i.e. w.e.f. September, 2014 to 31.12.2014 @ Rs.1,000/- per month excluding all taxes.

2.5 Issues were framed. In support of the case, the landlord stepped into the witness-box as PW1 and also proved documents. On the other hand, tenant stepped into the witness-box as RW1 and examined Roshan Lal, Clerk, Municipal Committee, Hansi, as RW2 and also proved their documents.

2.6 After hearing the arguments and appreciating the evidence, vide judgment dated 12.01.2018, learned Rent Controller, rejected the plea of the landlord for ejectment of the tenant on the ground of non-payment of

arrears of rent as the same was tendered as per provisional rent assessed by the Court. However, allowed the ejectment petition on the ground of personal necessity and the tenant was directed to handover the vacant possession of the demised premises to the landlord within two months from the date of said judgment.

2.7 Against the said judgment, the tenant filed two appeals, one against ejectment and another against the rejection of counter-claim. However, vide judgment dated 11.05.2023, both the appeals were dismissed by the learned Appellate Authority.

2.8 Aggrieved against the said judgment, the tenant has filed present revision petition.

3. Civil Revision No.5436 of 2023

3.1 The present petitioner-Ashok Kumar (hereinafter called, the tenant) was also the tenant like the petitioner-Gurcharan Singh in Civil Revision No.5043 of 2023, under the respondent-landlord Sunil Kumar (hereinafter called, the landlord). He took shop bearing House Tax Unit No.691B/17, marked with letters MNSR and shown with red colour in the site plan, at monthly rent of Rs.1,250/- in the year 1989, for the purpose of selling spare parts, and stopped paying rent after 2010. The landlord filed ejectment petition bearing CIS No.R/22/2014. All other pleadings are same as made by the petitioner in Civil Revision No.5043 of 2023.

4. Learned counsel for the petitioners/tenants, in both the revision petitions, has argued that separate issues regarding non-payment of arrears

of rent and personal necessity were not framed. There was no dispute regarding rate of rent and arrears of rent. The tenants have been in possession of their respective shops for the last more than 34 years. The tenants took a specific plea that rent was paid to the brother and mother of the respondent-landlord. Said contention was not even rebutted in the replication. It amounts to admission that the rent had already been paid to the family members of the landlord as they all were joint owners of the suit property. The landlord adopted a unique tactic to eject the tenants from the respective shops in their possession.

5. Learned counsel for the respondent has argued that both the courts below have given concurrent findings regarding rate of rent and arrears of rent. The ejectment petition was dismissed on the ground of non-payment of arrears of rent. The tenant failed to prove that any amount of rent was paid to the brother and mother of the landlord, so counter-claim was also rightly dismissed. He has further argued that the tenant(s) have admitted in their respective written statements that the respondent has become owner of the shops, in dispute, from the date of passing the decree in his favour. It is further argued that landlord had stepped into the shoes of his father and became the landlord of the property. Even one of the co-sharers can file ejectment petition against the tenant, so the courts below have rightly held that there exists relationship of landlord and tenant between the parties. The courts below have rightly held that the need of the landlord is bona fide.

6. I have heard the submissions of learned counsel for the parties and have gone through the file.

7. The tenants-petitioners in the respective written statements admitted that the respondent-landlord became owner of the suit property from the date of the decree in his favour, so petitioners-tenants are estopped from challenging the ownership. After making admission in the written statement, a person cannot give evidence against said admission. It is well settled that burden to prove the rate of rent is on the landlord and burden to prove that arrears of rent has already been paid, is on the tenant. The landlord claimed rent @ Rs.2,950/- per month, but the courts below held that the rate of rent was Rs.1,000/- per month. The tenants were in arrears of rent. Provisional rent was assessed and the same was tendered by the tenants-petitioners. The specific stand of the tenants is that after the death of the original landlord, they had paid rent to brother-Surender and mother-Phoolwati of respondent-landlord and to the respondent-landlord. Except bald statements of the tenants, there is no evidence regarding payment of rent to the brother and mother of the landlord. Since the petitioners-tenants failed to prove that the landlord had received any amount of rent, so the counter-claim has been rightly dismissed. The tenants examined Clerk, Municipal Committee, Hansi, as RW2, who proved the entry in the assessment register. It is well known that the entries in the house tax assessment register are for the purpose of collecting house tax and the same is not the evidence with regard to the rate of rent. Moreover, in the case in

hand, both the tenants admitted that they had paid the rate of rent as Rs.1,000/- per month and there is no ground to disbelieve said admission. Thus, the courts below have rightly decided the rate of rent in both petitions and arrears of rent payable by each tenant.

7.1 The shops, in dispute, are situated adjacent to G.T. Road, Hansi, District Hisar. In the vicinity, there are several spare parts shops and automobile parts shops. It has also come on record that auto market has also come at Hansi. The landlord since the time of his father has been running a small workshop and wants to start modern service station equipped with entire modern machinery i.e. for washing, service, alignment, wheel balancing, denting, painting etc. and is also planning to get automobiles/automobile parts agency. He wants to reconstruct the entire building and to start said business alongwith his son. There is no evidence that the landlord is having any other property in the area where such business can be started. The tenants cannot doubt the bona fide of the necessity of landlord. Neither the court nor the tenant can dictate the terms to the landlord and asked to do business in this or that manner. Moreover, the need of the landlord is to be judged from the viewpoint of the landlord and not from the viewpoint of the tenant. So landlord is the best judge of his requirements. In the absence of any material on record, it cannot be said that the need of the landlord is not bona fide. The courts below have rightly held that the need of the landlord is bona fide to start business along with his son by reconstructing the entire property.

8. In view of above, I do not find any illegality in the lawful orders passed by the courts below. The revision petitions are without merit and the same are dismissed accordingly.
9. Pending application, if any, shall also stand disposed of.

(GURBIR SINGH)
JUDGE

April 01, 2024
sanjeev

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No