



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No. 1599 of 2016 (O&M)
Date of Decision: 03.09.2024

Sunil Kumar Gupta

..... Appellant

Versus

Saravjeet Singh (now deceased) through LRs

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Rahul Sharma, Advocate
for the appellant-defendant.

Mr. Gurbachan Singh Bhatia, Advocate
for the respondent(s)-plaintiff.

Mr. Divanshu Jain, Advocate
for the applicant (in CM-12695-C-2018)

HARKESH MANUJA, J. (ORAL)

By way of present appeal, challenge has been laid to the judgments and decrees dated 04.05.2015 and 19.02.2016 passed by the Courts below, whereby suit for possession by way of ejectment, filed at the instance of respondent-plaintiff, stands decreed.

[2] Briefly stating, while claiming himself to be the owner-landlord of the premises in question comprising of two sheds measuring 20' x 42' and 10' x 42'; situated in Block No. 65, Gate No. 1, Village Dariya, U.T., Chandigarh, respondent-plaintiff filed a suit for possession by way of ejectment against the appellant-defendant, besides claiming arrears of monthly rent w.e.f. 01.06.2012 to

31.12.2012 @ Rs. 18,500/- per month, as also praying for *mesne profit* w.e.f. 01.01.2013 to 31.01.2013 @ Rs. 1,300/- per day along with interest. It was pleaded in the plaint that the tenancy in favour of appellant-defendant was terminated at the hands of respondent-plaintiff vide notice dated 03.12.2012 issued in terms of Section 106 of Transfer of Property Act, 1882 (**for short “the 1882 Act”**) followed by the filing of suit in hand.

[3] Upon appearance, the appellant-defendant filed written statement; though, the factum of tenancy under the respondent-plaintiff was admitted, however, the rate of rent as claimed by the respondent-plaintiff was disputed. Based on the pleadings, the following issues were framed by learned Civil Judge (Junior Division), Chandigarh (**hereinafter to be called as “trial Court”**):-

- “ 1. *Whether plaintiff is entitled to seek ejectment of the defendant from the demised premises on the grounds mentioned in the plaint ? OPP*
2. *Whether the plaintiff is entitled to recovery of Rs. 1,29,500/- being in arrears of rent w.e.f. 1.6.2012 to 31.12.2012 with future interest @ 18% per annum from the filing of the suit till its realization ? OPP*
3. *Whether the plaintiff is entitled to mesne profits @ Rs. 1,300/- per day being unauthorized occupant after 31.12.2012 ? OPP*
4. *Whether the suit is not maintainable in the present form ? OPD*
5. *Whether the plaintiff has not approached the Court with clean hands ? OPD*
6. *Relief. ”*

[4] The trial Court vide judgment and decree dated 04.05.2015 decreed the suit in favour of respondent-plaintiff, while holding that the tenancy *qua* two sheds measuring 10'x 42' and 20' x 42' which commenced in 2003 & 2007 respectively was validly terminated vide notice dated 12.12.2012 issued in terms of Section 106 of the 1882 Act, besides grant of decree for recovery of arrears for a sum of Rs. 18,000/- per month as *mesne profit* w.e.f. 01.01.2013 till 30.04.2015, as also recovery of *mesne profit* @ Rs. 31,500/- per month alongwith interest @ 9% per annum w.e.f. 01.05.2015 till the date of handing over the possession of the suit property in favour of respondent-plaintiff.

[5] Aggrieved thereof, the appellant-defendant filed first appeal, which came to be dismissed vide judgment and decree dated 19.02.2016 passed by learned Additional District Judge, Chandigarh **(hereinafter to be referred as "First Appellate Court")**, while upholding the judgment and decree passed by the trial Court in toto. Hence, the present appeal.

[6] Impugning the aforesaid judgments and decrees passed by the Courts below, learned counsel for the appellant-defendant submits that though suit for possession by way of ejectment *qua* the premises in question was filed at the instance of respondent-plaintiff on 01.12.2013, however, during pendency of the proceedings arising therefrom, in terms of notification dated 18.01.2019 issued under the signatures of Secretary, Estates Chandigarh Administration, the area

in question was notified to be controlled under the provisions of Punjab New Capital (Periphery) Control Act, 1952 (**for short “the 1952 Act”**). In view thereof, learned counsel submits that the rights of parties as regards their relationship of lessee and lessor were now to be governed under the provisions of East Punjab Urban Rent Restriction Act, 1949 (**for short “the 1949 Act”**) and, therefore, the suit filed at the instance of respondent-plaintiff was liable to be dismissed, besides even the decree passed in his favour having become non-executable in terms of Section 13 of the 1949 Act. In this regard, learned counsel has also placed reliance upon the relevant paragraphs from following judgments rendered by this Court:-

- (i) ***Ram Narain and others Versus Ram Lal and Others, 2003 (2) RCR (Rent) 660;***
- (ii) ***Sat Narain Saini Versus Smt. Sita Wati and another, 1980 (1) RCR (Rent) 589; and***
- (iii) ***Mani Subrat Jain Vs. Raja Ram Vohra, 1980 (1) RCR (Rent) 325.***

PARA 10 OF RAM NARAIN’S CASE

“10. In view of the above, it is apparent that the subsequent applicability of the Rent Act on account of declaration of urban area would render the decree of the civil Court inexecutable.”

PARA 8 OF SAT NARAIN SAINI’S CASE

“8. The landlord went up in appeal before the Supreme Court which affirmed the order of the High Court. P.N. Bhagwati, J., speaking for the Court held that it is true that an Executing Court cannot go behind the decree nor can it question

its legality or correctness. But there is one exception to this general rule and that is that where the decree sought to be executed is a nullity for lack of inherent jurisdiction in the court passing it, its invalidity could be set up in an execution proceeding. Where there was lack of inherent jurisdiction, it went to the root of the competence of the Court to try the case and a decree which was nullity was void and could be declared to be void by any Court in which it was presented. Its nullity could be set up whenever and wherever it was sought to be enforced or relied upon and even at the stage of execution or even in collateral proceedings. The learned Judge further held that by reason of the introduction of the proviso in Section 3 with retrospective effect the decree for eviction became a nullity and the Executing Court was justified in declining to execute it against the respondent. The above observations are fully applicable to the present case. Taking into consideration the said circumstances, I am of the opinion that the decree in the present case in view of the amendment in the Act became a nullity and is, therefore inexecutable.

PARA 6 OF MANI SUBRAT JAIN'S CASE

“6. *The expression 'tenant' includes 'a tenant continuing in possession after the termination of the tenancy in his favour'. It thus includes, by express provision, a quondam tenant whose nexus with the property is continuance in possession. The fact that a decree or any other process extinguishes the tenancy under the general law of real property does not terminate the status of a tenant under the Act having regard to*

the carefully drawn inclusive clause. Even here, we may mention by way of contrast that Subudh's case (supra) related to a statute where the definition in s. 2 (5) of that Act expressly included "any per son against whom a suit for ejectment is pending in a court of competent jurisdiction" and more pertinent to the point specially excluded "a person against whom a decree or order for eviction has been made by such a court." We feel no difficulty in holding that the text, rein forced by the context, especially s. 13, convincingly includes ex-tenants against whom decrees or eviction might have been passed, whether on compromise or otherwise. The effect of the compromise decree, in counsel's submission, is that the tenancy has been terminated. Nobody has a case that the appellant is not continuously in possession. The conclusion is inevitable that he remains a tenant and enjoys immunity under s. 13(1). The execution proceedings must, therefore, fail because the statutory road-block cannot be removed. Indeed, an application under the Act was filed by the landlord-defendant which was dismissed because the ground required by the Act was not made out."

No other argument has been addressed on behalf of the appellant-defendant.

[7] On the other hand, prayer made on behalf of the appellant-defendant has been vehemently opposed at the instance of learned counsel representing the respondent, while submitting that though the factum of demised premises being regulated under the

notification dated 18.01.2019 was factually disputed, yet the rights of the parties once having crystallized by the Civil Court, must before coming into force of the aforesaid notification, the same were not to be defeated and nullified with any subsequent inclusion of the premises in question in the urban area with the applicability thereupon under the provisions of the 1952 Act. In this regard, learned counsel places reliance upon the decisions rendered by the Hon'ble Apex Court in case of ***Shri Kishan @ Krishan Kumar Versus Manoj Kumar, 1998 AIR (Supreme Court) 999.***

[8] After hearing learned counsel for the parties and having gone through the paper-book / records, I am unable to find substance in the submissions made on behalf of the appellant-defendant.

[9] In the facts and circumstances of the present case, concurrent finding of fact has been recorded by the Courts below in favour of respondent-plaintiff that the relationship of lessee and lessor in favour of appellant-defendant was terminated at the hands of respondent-plaintiff vide notice dated 12.12.2012 (Ex. PW-4/C) issued in terms of Section 108 of the 1882 Act, followed by filing of suit for possession by way of ejectment, besides claiming *mesne profit*. The suit was decreed in favour of respondent-plaintiff on 04.05.2015 and the said judgment and decree was upheld by the First Appellate Court, vide judgment and decree dated 19.02.2016.

[10] In this view of the matter any subsequent inclusion of the

demised premises making it a part of notification to bring it under the applicability of the provisions of the 1952 Act, would not, by any stretch of imagination, render the judgments and decrees passed by the Courts below as un-executable in view of the law laid down by the Hon'ble Apex Court in case of **Sh. Kishan @ Krishan Kumar (supra)** as well as **Kesho Ram & Co.& Ors. Etc. Vs. UOI and others**, reported as (1989 (2) RCR (Rent) 425. Relevant portions of paragraphs 13 & 18 of **Kesho Ram's** case (supra) are reproduced hereunder:-

“13.A suit if instituted during the period of exemption could not be decreed, nor such decree could be executed after the expiry of five years period but the last portion of the Notification which states that Section 13 of the Act shall not apply to decree of civil courts whether such decree was passed during the period of exemption or "at any time thereafter" enlarged the period of exemption for an indefinite period of time, and it seeks to amend Section 13 of the Act. We do not find merit in the submission. As noticed earlier Section 13(1) imposes a complete ban against the eviction of a tenant in execution of a decree passed by a civil court before or after the commencement of the Act and it further lays down that a tenant in possession of a building or rented land shall not be evicted except in accordance with the provisions of Section 13 or an order made in pursuance of the provisions of the Act. SubSection (2) of Section 13 sets out statutory grounds on which the Controller, an authority constituted under the Act has power to pass order

of eviction against a tenant. Section 13 takes away the jurisdiction of civil court to pass a decree of eviction or execution thereof against a tenant in respect of a building which is subject to the provisions of the Act. The impugned Notification grants immunity to newly constructed buildings from the shackles of Section 13 of the Act for a period of five years. While doing so, the Notification has taken care to make the exemption effective by providing that the exemption shall be available to the building even if the decree is passed after the expiry of the period of five years provided the suit is instituted during the period of exemption. The emphasis is on the institution of the suit within the period of exemption of five years. Once the landlord institutes a suit before the expiry of the period of exemption, the decree even if passed after the period of five years will not be subject to the provisions of Section 13 of the Act. This is the true meaning of the Notification. The Notification does not enlarge the period of exemption instead it safeguards the rights of the parties which crystallise on the date of institution of the suit.....

- 18. In view of the above discussion we hold that Section 3 as well as the impugned Notification are valid and the same do not suffer from any constitutional or legal infirmity. We further hold that civil court has jurisdiction to pass decree even after the expiry of period of exemption, in suits instituted during the period of exemption, and to execute the same notwithstanding the provisions of Section 13 of the Act. In the result the civil appeals, special leave petitions, and the writ petitions fails and are accordingly dismissed with*

costs and all interim orders stand discharged.”

The aforesaid decision was even followed by this Court in the case of **Het Ram Vs. Virbhan**, reported as 2010 (1) RCR (Civil) 83. Para 11 thereof being relevant is extracted hereunder:-

“11. Possibly, no one can dispute about the aforesaid propositions of law but the same would not come to the rescue of the tenant, because in the present case, admittedly, the provisions of Rent Act were fully applicable when the landlord filed the ejectment petition, the Rent Controller passed the ejectment order against the tenant and the appellate authority decided the appeal of the tenant on the basis of compromise. The tenant accepted the ejectment order and compromised the matter in appeal. If the provisions of Rent Act were fully applicable at the relevant point of time then subsequent change will not, in any way, affect the rights already accrued to the landlord particularly when the tenant has accepted the order of ejectment by entering into compromise with the landlord. If the argument of learned counsel for the tenant is accepted then perhaps, no landlord would ever be able to get possession of his property.”

[11] In such circumstances, when the suit for possession by way of ejectment qua the demised premises was filed at the instance of respondent/ landlord for the property/ area in question forming part of the notification dated 18.01.2019 while bringing it under the applicability of provisions of 1952 Act and the decree for possession even been passed on 04.05.2015 and affirmed on 19.02.2016 by the

Courts below i.e. much prior to the date of notification dated 18.01.2019, the same cannot be nullified or made enforceable in law in the absence thereof being any specific exclusion qua the jurisdiction vested in the Civil Court.

[12] Moreover, the rights of the parties stood crystallized on the date of institution of the suit and therefore, the law applicable on the date of filing of the suit will continue to apply until its final culmination. Furthermore, there is no specific provision under the 1949 Act which oust the jurisdiction of Civil Court in respect of the cases validly instituted before the date when the provisions of Rent Act became applicable qua said area/ premises/ tenancy.

[13] With respect to the law cited on behalf of the appellant/ tenant, in the humble opinion of this Court, the decision passed in **Mani Subrat Jain's** case (supra) though rendered under the provisions of 1949 Act would not govern the rights of the parties as the same was passed by a Division Bench of the Hon'ble Apex Court; whereas the decision in case of **M/s Kesho Ram & Co.** (supra) under the same Act was rendered by a larger Bench (Three Judges).

Similarly, the decision rendered in **Ram Narain's** case (supra) **and Sat Narain Saini's** case (supra) would not even come to the rescue of the appellant/ tenant as the decision in **M/s Kesho Ram & Co.** was never discussed in **Ram Narain's** case (supra); whereas the view taken in **Sat Narain's** case (supra) has now been reversed by the Hon'ble Apex Court in **M/s Kesho Ram & Co.**, as such the

same cannot be made applicable.

[14] It may also be noticed here that the possession of the demised premises has already been handed over to the respondent-plaintiff on 07.10.2023 in execution of the judgments and decrees passed by the Courts below.

[15] In view of the aforementioned facts and circumstances, finding no illegality or perversity with the concurrent findings of the fact recorded by both the Courts below, the present appeal being devoid of merits, the same is hereby **dismissed**.

[16] Pending miscellaneous application(s), if any, shall also stand disposed off.

September 03, 2024
'dk kamra'/sanjay

(HARKESH MANUJA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No