

2024:PHHC:134807

2024:PHHC:134810

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved on:-04.10.2024
Pronounced on: 15.10.2024

I. CR-5555-2024 (O&M)

SURENDER KUMAR

.... PETITIONER

Vs.

GOPAL KRISHAN SHANDILYA AND OTHERS

.... RESPONDENTS

II. CR-5612-2024 (O&M)

SURENDER KUMAR

.... PETITIONER

Vs.

GOPAL KRISHAN SHANDILYA AND OTHERS

.... RESPONDENTS

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present:- Mr. J.P. Sharma, Advocate, for the petitioner.

Mr. Manish Mehta, Advocate, for respondent No.1.

DEEPAK GUPTA, J.

These two revision petitions have arisen out of the same
ejectment proceedings.

2. In order to avoid confusion, parties shall be referred as per their
status before the Id. Rent Controller.

3.1 It emerges that Bal Krishan had rented out the demised shop to
Mahabir Parsad way back in 1975. The original landlord Bal Krishan, as well as
original tenant Mahabir Parsad have since expired. Gopal Krishan, one of the
sons of the owner/landlord, brought the ejectment petition [RP/84/2017]

before Ld. Rent Controller, Narnaul under Section 13 of the Haryana Urban (Control of Rent & Eviction) Act 1973 against widow Smt. Banarsi Devi, two sons namely Bhupinder Kumar & Surender Kumar and two daughters namely Nisha Rani & Kanta of Mahabir Parsad, seeking their eviction from the demised shop on the grounds of non-payment of rent, ceasure to occupy and *bona fide* necessity.

3.2 Out of five, the four respondents namely, Banarsi Devi, Surender Kumar, Nisha Rani and Kanta, filed written statement refuting the contentions of landlord-Gopal Krishan and prayed for dismissal of the petition. The other respondent namely Bhupinder Kumar made a statement before the Court, adopting the same written statement.

3.3 The ground of non-payment of rent was given up after tender of rent as assessed by the Rent Controller. After taking evidence produced by the parties, Id. Rent Controller vide order dated 23.01.2020 allowed the petition and ordered ejectment of the respondents-tenants on the ground of ceasure to occupy and *bona fide* necessary of the landlord.

4.1 Bhupinder Kumar i.e. one of the respondents filed Rent Appeal No.3 of 2020 against the aforesaid ejectment order dated 23.01.2020 of the Rent Controller. However, that appeal was dismissed vide order dated 03.05.2023 and it is conceded that said Bhupinder Kumar did not prefer any revision before this Court against the order of the Appellate Authority.

4.2 Another respondent i.e. Surender Kumar filed a separate Rent Appeal bearing RA No.2 of 2020, which was dismissed in default on 18.04.2023. Application for restoration was dismissed on 05.10.2023. However, his Civil Revision No.6662 of 2023 was allowed by this Court vide order dated 19.01.2024 directing restoration of the appeal.

4.3 Ld. Appellate Authority, Narnaul then considered the submissions of the appellant-Surender Kumar. However, by that time Rent Appeal No.3 of 2020 as filed by the co-tenant Bhupinder Kumar, had already been dismissed on 03.05.2023 and in view of the same, RA No.2 of 2020 as filed by Surender Kumar was dismissed by the Appellate Authority by way of order dated 02.09.2024 on the ground of *res judicata*.

5.1 Now, said Surender Kumar has approached this Court by way of present two Revision Petitions.

5.2 CR-5555-2024 is filed against the order dated 02.09.2024 of the Appellate Authority. It is contended by Id. counsel that appeal of the petitioner has not been considered on merits and has been wrongly dismissed on the ground of *res judicata*. Prayer is made to remand the case to the appellate authority to consider his appeal on merits.

5.3 CR-5612-2024 has been filed against the order dated 03.05.2023, whereby RA No.3 of 2020 filed by co-tenant Bhupinder Kumar was dismissed by the Appellate Authority. It is contended by Id. counsel that co-tenant Bhupinder Kumar did not prefer any revision, as he colluded with the landlord, therefore, the present petitioner i.e. Surender Kumar is left with no other option but to challenge that order dated 03.05.2023 before this Court. Along with this CR-5612-2024, an application bearing CM-16893-CII-2024 under Section 5 of the Limitation Act is also moved to condone the delay of 413 days in filing the revision petition.

6. Appearance on behalf of the respondents of the two petitions i.e. landlord has been made through his counsel on account of advance notice, as Caveat had been filed.

7. Counsels for both the parties have been heard.

8. Taking up **CR-5555-2024**, there is no merit therein. Ejectment order dated 23.01.2020 was filed against all the five tenants, who are in fact the legal heirs of the initially inducted tenant-Mahabir Parsad. All those co-tenants had contested the petition. The appeal filed by one of them namely Bhupinder Kumar, was dismissed by the Appellate Authority on 03.05.2023. In that Rent Appeal No.3 of 2020, Surender Kumar i.e. present petitioner had been impleaded as respondent No.3. He was duly represented by Mr. Parmod Kumar Yadav, Advocate, as is evident from the order dated 03.05.2023 of the Appellate Authority. Said Mr. Parmod Kumar Yadav, Advocate had even made his submissions, as evident from para No.10 of the order dated 03.05.2023 of the Appellate Authority. In these circumstances, the order dated 03.05.2023 of the Appellate Authority becomes an order in the former appeal and as such, it will

operate as *res judicata* for the subsequent appeal.

9. Reliance in this regard can be placed upon ***S. Ramachandra Rao Vs. S. Nagabhushana Rao and others, 2022(4) RCR (Civil) 675***, wherein it has been held by Hon'ble Supreme Court that doctrine of *res judicata* is attracted not only in separate subsequent proceedings, but also at subsequent stage of same proceedings. Hon'ble Supreme Court referred to ***Y.B. Patil Vs. Y.L. Patil, (1976) 4 SCC 66***, wherein it was also observed as under: -

"It is well settled that principles of *res judicata* can be invoked not only in separate subsequent proceedings, they also get attracted in subsequent stage of the same proceedings. Once an order made in the course of a proceeding becomes final, it would be binding at the subsequent stage of that proceeding."

10. Similarly, in ***Barkat Ali and another Vs. Badri Narain (D) by Lrs, 2008 AIR Supreme Court 1272***, Hon'ble Supreme Court held that principle of *res judicata* not only apply in respect of separate proceedings but the general principles also apply at the subsequent stage of the same proceedings also and the same Court is precluded to go into that question again, which has been decided or deemed to have been decided by it at an early stage.

11. In ***Sheodan Singh Vs. Daryo Kunwar, 1966 AIR Supreme Court 1332***, trial Court decided two suits, both having common issues on the merits. Two appeals arose therefrom. One appeal was dismissed on some preliminary ground and resultantly, the trial Court's decision given on merits, stood confirmed. It was held by Hon'ble Supreme Court in these facts and circumstances that decision of the Appellate Court will be *res judicata* in the other appeal.

12. In the present case also, once the appeal filed by co-tenant Bhupinder Kumar i.e. RA No.3 of 2020 had been decided by the appellate authority on 03.05.2023 against ejectment order dated 23.01.2020 passed by Id. Rent Controller, Narnaul, obviously the same operated as *res judicata* for the separate appeal, filed by other co-tenant-Surender Kumar against the same ejectment order.

13. In view of the above discussion, the contention of Id. counsel for

the petitioner so as to remand the matter to the Appellate Authority to decide his appeal on merits, is hereby declined. **As such, CR-5555-2024 is hereby dismissed.**

14. Coming to **CR-5612-2024**, it has been filed by Surender Kumar, assailing the order dated 03.05.2023 passed by the appellate authority in the appeal, which was filed by Bhupinder Kumar. Surender Kumar i.e. present petitioner was also a party to that appeal. He duly contested the appeal and was represented by his counsel. Concededly, Bhupinder Kumar, whose appeal was dismissed by the Appellate Authority on 03.05.2023, has not preferred any revision before this Court. Surender Kumar, despite being a party to the aforesaid appeal, did not challenge the aforesaid order dated 03.05.2023 within time. However, considering the circumstances that he had filed separate appeal No.2 of 2020, which was initially dismissed as default and was later on restored as per order of this Court, even if the delay of 413 days in filing the revision is accepted, still the revision if considered on merits, it does not have any substance.

15. Ld. counsel contends that in order to arrive at conclusion that the tenants had ceased to occupy the premises, the Courts below have relied upon the report of the Local Commissioner. Ld. counsel contends that notice to the tenants was not given regarding the visit of the Local Commissioner and that market was closed on the date of visit.

16. After going through the orders passed by the Courts below, this Court does not find any merit in the aforesaid contention. It has been found by the Courts below that not only the fact that Bhagwan Dass, the neighbourer to the shop examined as PW2 and landlord-Gopal Krishan examined himself as PW3, supported the ground of cease to occupy, their statements found corroboration from the testimony of PW4-Rajesh Saini, Advocate, who was appointed as Local Commissioner. As per the report of said Local Commissioner EX.PW4/A, the shop was closed at the time of his visit. From the position of shutter, it appeared that the same had not been opened for long time as dust was collected on the shutter and the webs were appearing on the roof the shop. Both side locks were in rusted condition with sand lying upon them. The

persons present at the spot also told that shop was lying closed for a long time. Photographs clicked from the spot also supported this fact. Not only this, it was further found that the respondent-tenant could not produce any evidence regarding running of the shop. So much so, no electricity bill was produced due to which the electricity connection had been disconnected. No document was produced by the tenants to show that any business was being carried on in the demised premises.

17. In the face of aforesaid concurrent findings of facts recorded by the Courts below, which are based upon proper appreciation of evidence, this Court does not find any illegality or perversity so as to call for any interference.

18. The ejectment on the ground of *bona fide* necessity is assailed by Id. counsel only for the reason that landlord-Gopal Krishan was a Government employee and after his retirement, he filed the ejectment petition after three years, which indicated that he did not have any *bona fide* necessity. The contention has no merit. It is the specific case of the landlord, supported by evidence, that he required the shop to start his own business to carry on the stationery and sports item therein. There was no convincing evidence to rebut the said evidence. Landlord is the best judge of his requirement and the tenant cannot challenge as to when the petitioner should approach the Court for seeking the ejectment or when he should file the ejectment petition. The *bona fide* necessasity cannot be disbelieved only for the reason that landlord approached the Court for seeking ejectment three years after his requirement.

19. Consequent to entire discussion as above, it is held that there is no merit in the present petition i.e. CR-5612-2024. There is no reason to interfere in the well reasoned finding of facts recorded by the Courts below. The impugned order does not suffer from any illegality or perversity.

20. Accordingly, **CR-5612-2024** is also hereby dismissed.
A photocopy of this order be placed on the connected case file.

15.10.2024
Vivek

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned?

Yes

Whether reportable?

No