

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : CR No.7745 of 2023 (O&M)

Pronounced On : February 20, 2024

Go Parties India Pvt. Ltd. and others Petitioners
vs.
Gaurav Anand Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

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Present : Mr.Ashok Aggarwal, Senior Advocate with
Dr.Misha Kumar, Advocate,
Mr.Amit Aggarwal, Advocate,
Mr.Nilesh Bhardwaj, Advocate and
Mr.Shrenik Jain, Advocate
for the petitioners.

Mr.M.L.Saggar, Senior Advocate with
Mr.Vikrant Rana, Advocate,
Mr.Sunny Saggar, Advocate and
Mr.Armaan Saggar, Advocate
for the respondent.

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GURBIR SINGH, J. :

1. Challenge in the present revision petition is to the order dated 11.12.2023, passed by learned Appellate Authority, Gurugram, whereby the order dated 31.05.2022, passed by learned Rent Controller, has been set aside and appeal filed by respondent/landlord has been allowed.
2. The facts, which are necessary for adjudication of this petition are that the respondent/landlord filed a petition under Section 13(2) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as – the Act), for ejectment of the petitioners/tenants from the demised premises and for recovery of arrears of rent amounting to

Rs.4,89,000/- and penalty/damages to the tune of Rs.6,30,000/- plus interest, on the ground that petitioner no.1 is a private limited company, petitioner no.2 is an Advocate and a businessman who is Director of petitioner no.1 along with petitioners no.3 and 4. In the year 2015, petitioner no.2 approached the respondent to take the premises on rent for his residential purposes and he is tenant in the premises on month-to-month tenancy since March 2015. Later on, in December 2019, petitioner no.2 informed the respondent that he would be leasing the premises through a company controlled by him and accordingly, petitioner no.1 took the premises under the Leave and License Agreement dated 07.01.2020. So, the premises was let out to petitioner no.1 for a period of 12 months, commencing from 01.01.2020 to 31.12.2020. It was agreed that the license fee would be paid by post-dated cheques covering the entire term, with the promise that the same would be honoured on presentation. Only two months' payments were made and then cheques were dishonoured. The petitioners failed to pay the amount of rent/license fee payable thereafter.

3. The petitioners/tenants contested the petition submitting therein that there was no relationship of landlord and tenant between the parties. There was relationship of licensor and licensee, as per the license agreement, which was duly executed and registered on 07.01.2020 (Annexure P-1). Earlier there was lease agreement between the parties for a period of five years i.e. from 2015 to 2019 and thereafter, the instant agreement was executed deliberately. There is no exclusive possession of the licensed premises with the petitioners and they were having right to use the licensed premises along with the respondent. It was further submitted that no rent

was to be charged, only license fee was payable. Application moved by the petitioners under Order 7 Rule 11 CPC was disposed of with the direction to frame issues qua the relationship between the parties. Therefore, unless the issue qua relationship between the parties is framed and decided, no provisional rent can be assessed. An application under Section 13(2)(i) of the Act, for assessment of provisional rent, was moved by the respondent, which was dismissed by learned Rent Controller vide order dated 31.05.2022 on the ground that there is no relationship of landlord and tenant between the parties. So, it was further held by learned Rent Controller that interest of the respondent/landlord stood protected because if the said relationship is established subsequently, then the tenant would lose the opportunity of making payment towards arrears of rent and would be liable to be evicted without any further opportunity. Therefore, the learned Rent Controller refused to pass order regarding assessment of provisional rent.

4. Appeal was filed by the respondent/landlord and the Appellate Authority, vide impugned order dated 11.12.2023, observed that the premises in question was let out to petitioner no.1 at a license fee of Rs.60,000/- per month for the first six months and it was to increase to a sum of Rs.65,000/- per month from July 2020 to December 2020 i.e. for the last six months. The license fee sought to be paid by the petitioners to the respondent was sort of rent. The payment of license fee, in the form of rent, itself indicates that the relationship between the parties was that of landlord and tenant and not of licensor and licensee. So, it was required by the learned Rent Controller to assess the provisional rent in view of the law laid

down in case of **Rakesh Wadhawan vs. M/s Jagdamba Industrial**

Corporation – 2002(1) RCR (Rent) 514.

5. Aggrieved by the aforesaid order passed by learned Appellate Authority, learned counsel for the petitioners has submitted that where relationship of landlord and tenant between the parties is denied, the Rent Controller is not obliged to assess the rent or call upon the tenant to make payment of rent. Reliance has been placed on **Yashpal Singla vs. Vijay Kumar – 2004(3) PLR 504**, **Gawritex Industries Ltd. vs. Sqn. Ldr. Gurdial Singh – (2009) 2 RCR Rent 213**, **Hukmi Devi vs. Bhagwan Dass – 2003(1) RCR (Rent) 533**, **Jagdish Singh vs. Mohan Lal – 2004(3) PLR 78** and **M/s Chopra Jewellers vs. Rajinder Pal Gupta – 2010(1) RCR (Rent) 228**.

6. It is further argued that issue has already been framed regarding relationship between the parties and unless it is established that there is relationship of landlord and tenant between the parties, the petitioners cannot be asked to pay the rent. It is a risk for petitioners to face eviction without getting any opportunity to pay the rent.

7. On the other hand, learned counsel for the respondent has submitted that in the year 2015, when the property was taken on rent, a lease deed was executed by petitioner no.1 through petitioner no.2 in favour of the respondent. Further, there is no change in the terms of deed except it is written as Leave and License Agreement. The petitioner was in exclusive possession of the premises as lessee and the possession as a lessee was never surrendered to the respondent. Merely by changing nomenclature, about the status of the parties as licensor and licensee, the relationship of tenant and landlord is not changed. At this stage, the Court is required to see the

intentions of the parties and not otherwise. Reliance in this regard has been placed on **Dr.Harpreet Kaur vs. Khajinder Singh – Law Finder Doc Id # 696053.**

8. I have heard learned counsel for the parties and perused the case file.

9. Section 105 of the Transfer of Property Act is reproduced hereunder for ready reference :-

“105. Lease defined —

A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

Lessor, lessee, premium and rent defined —

The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.”

10. A lease of property under Section 105 of the Transfer of Property Act is defined as a transfer of a right to enjoy such property made for a certain time in consideration for a price paid or promised, which means a transfer of an interest in land. Before the lease, the owner had right to possession of the land and by the lease, he excludes himself during its currency, from that right.

11. Section 52 of the Indian Easements Act reads as under :-

“52. License defined –

Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful and such right does not amount to an easement or an interest in the property, the right is called a license.”

12. A license under Section 52 of the Indian Easements Act, is a right where one person grants to another or to a definite number of other persons a right to do or continue to do in or upon the property of the grantor, something which would in the absence of such right be unlawful and such right does not amount to an easement or an interest in the property. In other words, if property remains in possession and control of the owner and only right to use the property in a particular way or under certain terms is given, then it is a license. The case laws that make the distinctions crystal clear are Associated Hotels of India vs. R. N. Kapoor – AIR 1959 SC 1262, Konchanda Ramamurthy vs. Gopinath Naik and Ors – AIR 1968 SC 919, Captain B. V. D’Souza vs. Antonio Fausto Fernandez – AIR 1989 SC 1816 etc. Therefore, intention of the parties is the real test for ascertaining the character of a document as a lease or license. If, under the document, a party gets exclusive possession of the property, prima facie he is considered to be a tenant or lessee. In case Khalil Ahmed Basher vs. Tufelhussein Samasbhai Sarangpurwala – 1988 AIR 184, Hon’ble Apex Court held that if an interest is created in an immovable property, which entitles a transferee to enjoy it without any interference, the document should be construed as that of a lease agreement. In the case in hand, earlier lease deed was

executed between the parties and petitioners came in possession of the property exclusively which was for three years starting from 01.01.2017 to 31.12.2019, subject to payment of agreed lease amount mentioned therein. On 07.01.2020, Leave and License Agreement was executed for a period of 12 months and since beginning i.e. from 01.01.2020, almost on the same terms and conditions and came in exclusive possession of the petitioners. The possession was already with the petitioners prior to the execution of this Leave and License Agreement on the basis of lease agreement and on the completion thereof, from the very next day, the aforesaid Agreement was executed calling therein the parties as licensor and licensee. The intention of the parties was actually to create lease/rent agreement. The petitioners were given exclusive possession of the property, they were to use the same as residence-cum-office. The petitioners were liable to pay the electricity charges, water charges, payments to the Society and other charges. No one will allow other to interfere in his residence or office. The intention is to be gathered from the contents of the document. Earlier possession as lessee was never surrendered. On termination of lease, the property is in possession in the same way. In case **Tek Chand vs. Harbans Lal – 2023 (2) RCR (Rent) 33**, real brother of the respondent had been residing in the said property for a period of two decades and property was registered in the name of father of the parties. In case **Hukma Devi (supra)**, the tenant admitted that he took the shop on rent for one year on 08.08.1968 and he relinquished the possession of the shop since long, which was not in his possession. In case **Dr.Harpreet Kaur (supra)**, this Court held that the order of provisional rent determined by the Rent Controller will not, in any manner,

prejudice the rights of the petitioner to raise controversy regarding his/her status as lessee or licensee. The relevant extract of the said order reads as under :-

“...So far as petitioner is concerned, she is admittedly in use and occupation of the shop in dispute. Whether her possession is of a tenant or that of a licensee, is not the subject matter before this Court but the fact remains that she has to pay lease money or licence fee for said use and occupation which prima facie has been assessed by the Rent Controller to be Rs.8000/- per month. The order of provisional rent determined by the Rent Controller will not, in any manner, prejudice the rights of the petitioner to raise controversy regarding her status as lessee or licensee. The provisional rent assessed vide order dated March 18, 2014 will not, in any manner, prejudice the rights of the petitioner to be determined in the rent petition. The pleas raised in the present petition can be raised by the petitioner at the final stage on merits.”

13. In the case in hand, petitioners can retain possession only on payment of amount. Whether it is lease amount or license amount is a question of trial. The petitioners are in exclusive possession of the premises. It seems that the petitioners want to continue in possession without payment of any amount. The assessment of provisional rent is not going to cause any prejudice to the petitioners. This is in accordance with the spirit of law laid down by Hon'ble Supreme Court in case **Rakesh Wadhawan** (*supra*).

14. In light of the above discussion, this Court is of the view that prima facie there is relationship of landlord and tenant between the parties.

The Appellate Court has rightly passed the impugned order dated

11.12.2023, thereby directing the learned Rent Controller to make assessment of provisional rent.

15. Accordingly, no ground is made out to interfere in the well reasoned speaking order passed by learned Appellate Authority. So, this revision petition is without any merit and the same is hereby dismissed. The Court concerned shall give at least 15 days’ time for payment of provisionally assessed rent, by fixing a date for payment of the same and then proceed in accordance with law.

16. However, anything stated herein above is only for the purpose of deciding this petition and shall have no effect on the merits of the case.

17. Pending applications, if any, shall stand disposed of along with this judgment.

February 20, 2024
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.