
(2003) 02 P&H CK 0213

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 2058 of 1984

Krishan Kumar

APPELLANT

Vs

Mukandi Lal

RESPONDENT

Date of Decision: Feb. 19, 2003

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115
- Haryana Urban (Control of Rent and Eviction) Act, 1973 - Section 13(2), 15(6)

Citation: (2003) 134 PLR 334 : (2003) 1 RCR(Rent) 578

Hon'ble Judges: M.M. Kumar, J

Bench: Single Bench

Advocate: V.K. Jain and J.L. Malhotra, for the Appellant; Anil Bansal, for the Respondent

Final Decision: Dismissed

Judgement

M.M. Kumar, J.

This is landlord's petition filed under Sub-section 6 of Section 15 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (for brevity "the Act") against the judgment of reversal dated 30.5.1984 passed by the Appellate Authority, Hissar, holding that there was neither any material change of user nor any material impairment because there was no rent note in existence showing the purpose, for which the demised premises was let-out. The tenancy was admittedly oral. It has also been found that the demised premises, which is a shop was taken on rent for selling iron. The change of use as alleged at the time of filing the ejectment petition was that the tenant-respondent has been selling steel and aluminium utensils and stoves in the demised premises. The appellate authority held on the basis of a judgment rendered by a Full Bench of this Court in the case of Sikander Lal v. Amrit Lal (1984)86 P.L.R. 1 that it would not amount to change of user because the subsequent use of the shop was ancillary to the original purpose. The observation of the Appellate Authority reads as under:-

"First, it is not proved beyond doubt that the shop was specifically rented out for sale of iron articles. The word etc. connotes that it was left out for running business of iron and alike purposes. It is also admitted that the appellant is now selling utensils of aluminium, iron and stainless steel in the shop. Previously he has been dealing in iron goods like Tassla, Tawa, Degchi etc. as admitted by Bishan Kumar RW-1. But this is no change of user in view of the latest law on the point. It is contained in Sikander Lal v. Amrit Lal (1984)86 P.L.R. I. a Full Bench ruling of our own High Court which lays down that if subsequent use of the premises is merely ancillary to the specific original purpose so allied and akin to each other, it would amply no change of user. The evidence of the petitioner is unsatisfactory on the point of change of user. Vinod Kumar through whom the petitioner filed the ejectment petition and who filed the Vakaltanama in this case has not come in the witness box to depose on the material facts. No neighbour in whose presence the tenancy was created has been produced. Moreover, in the ejectment petition, it has not been alleged as to when the alleged change of user took place. Similarly, there is no evidence to that effect."

2. The second ground that there was material impairment in the utility of the building by fixing steel shutters in place of wooden slippers was also held insufficient for ordering the eviction of the tenant-respondent. The view of the Appellate Authority is reflected in para 10, which reads as Xinder;-

"Now taking up the third ground regarding materially diminishing the utility of the building by fixing shutters in place of wooden slippers, the statement of Ashok Kumar PW-1 can be referred to. He has stated on 11.11.1982 that the appellant has fixed the shutters 2 or 3 years back by which there has been damage to the shop but on the other hand Kharati Lal PW-2 says that shutters were fixed during emergency. This discrepancy cannot be reconciled. The evidence of the appellant is that this change of shutters from the wooden slippers was made by the landlord Sheo Narain himself who is no more in the world. Therefore, this allegation is not proved. Even it be taken that wooden doors were replaced by shutters, there is no evidence to the effect that this change diminished the value and utility of the building."

3. Mr. V.K.Jain, learned senior counsel appearing for the landlord-petitioner has vehemently argued that the findings of facts recorded by both the Courts below are liable to be reversed in exercise of revisional jurisdiction in Sub-section 6 of Section 15 of the Act in as much as once it is found that the shop was let out for the specific purpose of running an iron business then it would be violative of the terms of agreement to change its use by selling steel/aluminium utensils and stoves there. He has also submitted that the change of wooden slippers by steel shutters would constitute material alterations warranting ejectment of the tenant-respondent from the demised premises within the meaning of Section 13(2) (iii) of the Act.

4. Mr. Parbodh Mittal, learned counsel for the tenant-respondent has argued that there is no scope for interference in the findings of facts recorded by both the Courts below

because no rent note ensuring the term of the agreement to use the shop for a particular purpose have been proved. Only oral evidence has been brought on record showing that the shop was let out for the purpose of running iron business. According to the learned counsel sale of steel/aluminium utensils and stoves would be in any case be covered by the primary purpose of selling iron in the shop. The learned counsel has further argued that on the second ground also there is hardly any room to interfere because the findings of facts recorded by both the Courts below are that the replacement of wooden slippers with an iron shutter would not result into impairment of the value and utility of the demised shop.

5. After hearing the counsel for the parties, I do not find any legal infirmity in the conclusion reached by the Appellate Authority that the tenant-respondent is not liable to be ejected from the demised shop on any of the two grounds. The findings of facts recorded by the Courts below do not call for interference unless it is established that the same are without any evidence.

6. The power of revision to interfere u/s 15(6) of the Act is limited to case when the findings recorded by the Rent Controller or Appellate Authority are without any evidence. It has been repeatedly held that the revisional powers of the High Court u/s 15(6) of the Act would not include the power to reverse the concurrent findings of the Courts below without showing that those findings were erroneous or without evidence. The main object of the revisional power vested in the High Court is that it should satisfy itself as to the legality and propriety of the order under revision. Sub-section 6 of Section 15 of the Act is reproduced below for facility of reference:

"15. Appellate and revisional authorities.- (1) to (5) xx xx xx

(6) [The High Court] as revisional authority, may, at any time on its own motion or on the application of any aggrieved party, made within a period of ninety days, call for and examine the record relating to any order passed or proceedings taken under this Act for the purpose of satisfying itself as, to the legality or propriety of such order or proceedings and may pass such order in relation thereto as it may deem fit. In computing the period of ninety days the time taken to obtain a certified copy of the order shall be excluded."

7. A perusal of Sub-section (6) of Section 15 of the Act makes it evident that this Court is clothed with the power to call for record of any case and to examine it for the purpose of satisfying itself as to whether the order passed or proceedings taken under the Act are in accordance with its provision, lawful and proper. This provision as well as the identical provision of Sub-section (5) of Section 15 of the East Punjab Urban Rent Restriction Act, 1949 (for brevity, "the Act") made under the Act have repeatedly came up for consideration before the Supreme Court. In the case of Vaneet Jain v. Jagjit Singh (2000)126 P.L.R. 263 (S.C.) dealing with Sub-section 6 of the Section 15 of the Act, their Lordships observed as under;-

"Sub-section (6) of Section 15 of the Act empowers the High Court to exercise its revisional jurisdiction for the purpose of satisfying itself if an order passed by the Rent Controller or the appellate authority is in accordance with law. The question that arises for consideration is whether the High Court in its revisional jurisdiction can reassess or re-evaluate the evidence only to come to a different finding than what has been recorded by the Court below. This Court in the case of [Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta](#), held, that the High Court cannot enter into appreciation or re-appreciation of evidence merely because it is inclined to take a different view of the facts as if it were a court of facts. However, the High Court is obliged to test the order of the Rent Controller on the touchstone of whether such an order is in accordance with law. For that limited purpose the High Court would be justified in reappraising the evidence, In [Sarla Ahuja Vs. United India Insurance Company Limited](#), it was held that the High Court while exercising the jurisdiction can reappraise the evidence only for a limited purpose for ascertaining as to whether the conclusion arrived at by the fact-finding court is wholly unreasonable.

A perusal of Sub-section (6) of Section 15 of the Act shows that the power of the High Court to revise an order is not an appellate power, but it is also true that it is not akin to power exercisable u/s 115 of the Code of Civil Procedure. It is no doubt true that the High Court would be justified in interfering with the order passed by the appellate authority if the legality or propriety of such order demands such interference. We are, therefore, of the view that it is not permissible for the High Court to reassess or reappraise the evidence to arrive at a finding contrary to the finding of fact recorded by the Court below."

8. Similar view has been taken in the case of Shiv Lal v. Sat Parkash 1993 (suppl.)2 S.C.C. 345 and [Bhoolchand and Another Vs. Kay Pee Cee Investments and Another](#), . Reference may also be made to [Pooran Chand Vs. Motilal and Others](#), , [Helper Girdharbhai Vs. Saiyed Mohmad Mirasaheb Kadri and Others](#), , Ram Dass v. Ishwar Chander AIR 1980 S.C. 1422, and [Rajbir Kaur and Another Vs. S. Chokesiri and Co.](#), . Sub Section 6 of Section 15 of the Act also fell for consideration in the case of Lachhman Dass v. Santokh Singh (1995)111 P.L.R. 276 (S.C.). Placing reliance on Hari Shankar v. Rao Girdhari Lat Chowdhury AIR 1963 S.C. 698: [State of Kerala Vs. K.M. Charia Abdullah and Co.](#), and [Neta Ram Vs. Jiwan Lal](#), their Lordships pointed out the distinction between the revisional power under the Rent Act and the appellate power which reads as under:-

"From the use of the expression "Legality or propriety of such order or proceedings" occurring in Sub-section (6) of Section 5 of the Act, it appears that no doubt the revisional power of the High Court under the Act is wider than the power u/s 115 of the CPC which is confined to jurisdiction, but it is also not so wide as to embrace within its fold all the attributes and characteristics of an appeal and disturb a concurrent finding of fact properly arrived at without recording a finding that such conclusions are perverse or based on no evidence or based on a superficial and perfunctory approach. If the High Court proceeds to interfere with such concurrent findings of fact ignoring the aforementioned well-recognised principles, it would amount to equating the revisional powers of the High

Court as powers of a regular appeal frustrating the fine distinction between an appeal and a revision. That being so unless the High Court comes to the conclusion that the concurrent findings recorded by the two courts below are wholly perverse and erroneous which manifestly appear to be unjust there should be no interference."

9. Similar view has been taken by the Supreme Court in the case of *Kanchana v. P. Manian J.T.* 2002 (Supl.I) S.C. 36. Dealing with the question of willful default in payment of rent by a tenant, their Lordships held that it is a question of fact, which should not ordinarily be disturbed while exercising powers of revision. The view of their Lordships read as under:-

" We must observe that where there has been a willful default in payment of the rent by the respondent, is primarily a question of fact which should not ordinarily be disturbed by a revisional court unless the order suffers from non-consideration of important evidence, or misreading of the evidence or recording a conclusion which no reasonable man in the given facts could have arrived at. A perusal of the order of the High Court, under challenge, does not show that the order was interfered with on any of the aforementioned grounds. By a curious reasoning which we are unable to appreciate, the High Court concluded.

"10. In my opinion considered opinion, the decision in [Vijayakumar Vs. Ravindran Jesudasan and Others](#), is not applicable to the facts and circumstances of this case as the question of adjusting the deposit of advance available with the respondent-landlady does not arise. However, I am obliged to apply the decision of the apex Court in [K.A. Ramesh and Others Vs. Smt. Susheela Bai and Others](#), wherein, it is clearly held that even if there was any default during the pendency of such proceedings, it was open to the respondents to enforce the statutory right available to them. Therefore, the respondent-landlady having failed to avail such statutory right, is not entitled to complain against the revision petitioner-tenant for an alleged wilful default.

11. Hence, I am satisfied that both the authorities below erred in holding that the revision petitioner-tenant has committed wilful default and ordered eviction. Therefore, the order of eviction of the Courts below are set aside and the revision is allowed.

10. From the above enunciation of law laid down by the Supreme Court it is evident that despite wider nature of power of revision with the High Court under the Rent Act than the power of revision u/s 115 of the Code of Civil Procedure, 1908, a distinction has to be maintained between a revision and an appeal. The ground of revisions are limited and can be summed up as under:-

- a) Findings are perverse;
- b) Findings are bald and without evidence;
- c) Findings are based on perfunctory and superficial approach;

d) Findings cannot be reversed by re-assessing evidence merely because a view different than the one recorded by the Courts below is possible:

f) Powers of revision under Sub-section (6) of Section 15 of the Act do not extend to power of regular appeal.

11. In view of the above, it is evident that no interference is called for and the principles extracted above would show that there is no legal infirmity in the order passed by the Appellate Authority. The instant petition, therefore, is liable to be dismissed.

12. For the reasons recorded above, this petition fails and the same is dismissed.