
(2001) 05 P&H CK 0120

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 4957 of 1999

Ranbir Singh

APPELLANT

Vs

Neeraj Kumar

RESPONDENT

Date of Decision: May 24, 2001

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 15 Rule 5, Order 6 Rule 17, 148 , 151
- Haryana Urban (Control of Rent and Eviction) Act, 1973 - Section 13(2)

Citation: (2002) 1 RCR(Civil) 108 : (2001) 1 RCR(Rent) 692

Hon'ble Judges: M.L. Singhal, J

Bench: Single Bench

Advocate: Mr. Anil Khetarpal, for the Appellant; Mr. M.S. Guglani, for the Respondent

Judgement

M.L. Singhal, J.

This is Civil Revision against the order dated 28.8.1999 of Civil Judge (Jr. Division), Jagadhri, whereby he dismissed the application of the defendant for amendment of the written statement.

2. This revision has arisen in the following circumstances:-

3. Neeraj Kumar filed suit for possession on 9.5.1990 of shop No. 19 situated in Anant Market, Jagadhri against Ranbir Singh on the allegation that he (Neeraj Kumar) is owner of the shop. He let out this shop to Ranbir Singh on 1.6.1989 on a rental of Rs. 400/- per month. It was a monthly tenancy. Monthly tenancy was terminated through notice dated 14.2.1990 and the defendant was called upon to vacate the shop by 31.3.1990. In case, he failed to deliver the vacant possession by 31.3.1990, it was stipulated in the notice that Rs. 20/- daily would be charged as compensation for the illegal use and occupation of the shop. This shop is exempt from the provisions of the Haryana Urban (Control of Rent and Eviction) Act, 1973 for a period of 10 years from the date of its completion. It was completed in December, 1984. In addition to the possession of the shop, plaintiff claimed

decree for the recovery of Rs. 4000/- as rent with effect from 1.6.1989 to 31.3.1990 and further Rs. 740/- as compensation for the illegal use and occupation of this shop by the defendant for the period 1.4.1990 to 7.5.1990 at the rate of Rs.20/- per day and further at Rs.20/- daily till the shop is actually vacated.

4. Defendant contested the suit saying that he is entitled to the protection of the Haryana u/s 13 of the said Act. It was admitted that he was liable to pay rent at the rate of Rs. 400/- per month from 1.6.1989 to 31.3.1990, which he was always ready and willing to pay. As the plaintiff was not ready to issue him receipt rent could not be paid to him. He is still ready and willing to pay rent to the plaintiff in case he given him receipt.

5. Defendant made an application under Order 6 Rule 17 read with Section 151 CPC for amendment of the written statement on 7.4.1997. Through amendment, in para No.2 of the written statement, the word "denied" was sought to be written instead of the word "admitted" written earlier. Earlier para No.2 of the plaint was "that on 1.6.1989 the above mentioned shop was rented to the defendant at Rs. 400/- per month and reply to this para was "para 2 of the plaint is admitted. After the word "denied" he wanted to add the following lines," the rate of rent is Rs.50/- per month of the shop in suit including all taxes. In other words, he wanted to say that the rate of rent was Rs. 50/- per month and not Rs. 400/- per month as claimed by the plaintiff.

6. This application was opposed by the plaintiff urging that this amendment cannot be allowed as through the proposed amendment, defendant wanted to withdraw the admission regarding the rate of rent, which he had made in the written statement. Matter had gone up to the High Court on his admission and the High Court had passed the order on the basis of this admission. Defendant cannot be allowed to undo the order passed by the High Court by amending his written statement. The rate of rent is Rs. 400/- per month and not Rs. 50/- per month as alleged by the defendant now. As the defendant was not depositing the admitted rent, the plaintiff made an application under Order 15 Rule 5 CPC for striking off the defence and thereafter revision was filed in which defendant was asked to deposit the entire rent by the date fixed by the High Court, which was 24.7.1997. It was alleged that this application for amendment was moved mala fide with a view to set at naught the order of this Court whereby defendant had been called upon to pay the entire rent by 24.7.1997.

7. Defendant moved yet another application for amendment of the written statement under Order 6 Rule 17 read with Section 151 CPC on 10.12.1997 in continuation of and in addition to the application for amendment of the written statement filed earlier. Through this application for amendment of the written statement, defendant wanted to incorporate the following facts:

8. The defendant is in possession of Shop Nos. 16 and 18 at the rate of Rs. 425/- per month whereas the Shop No. 17 is in possession of the defendant at the rate of Rs. 225/- per month. As such, the defendant is in possession of Shop Nos. 16, 17, 18 at the rate of

Rs. 650/- per month and is also in possession of Shop No. 19 i.e., the shop in dispute which in fact is neither a shop nor a godown and it is being used by the defendant as a small store and the shop in dispute is without electric fitting, without any shutter/door and it is in the shape of covered verandah and the same is situated at the back of the market and it is more or less a dark room having no out-let for fresh air etc. and the same is situated near the toilet of the main market. The alleged shop in dispute No. 19 was let out by the plaintiff at the rate of Rs. 50/- per month only, though the defendant has not issued any receipt even after receiving rent from Hind Furniture through the defendant and no rent deed has been executed in between the parties in respect of the shop in suit.

Defendant gave reply to the notice. Fact that the rate of rent is Rs. 50/- per month so far as shop No. 19 is concerned is clear from the reply of the notice Rs. 50/- per month and not Rs. 400/- per month. In this suit defendant had been depositing rent @ Rs. 50/- per month in Court for the last so many months. In fact M/s. Hind Furniture Emporium is in possession of the shop in dispute i.e. shop No. 19 since the year, 1977 at the rate of Rs. 50/- per month and the same was taken on rent by the defendant as a partner of M/s Hind Furniture Emporium, Jagadhri and not in his individual capacity. There are two partners of M/s Hind Furniture Emporium namely Ranbir Singh and Jai Pal Singh sons of Sh. Narata Singh. As such suit against the defendant in his individual capacity is legally not maintainable and the suit is liable to be dismissed on this ground alone. Plaintiff has not closed his evidence as yet. Pleas, which the defendant want to take are essential pleas which go to the root of the case.

9. Plaintiff filed reply to this application opposing the prayers of the defendant for amendment, urging that Shop No. 17 for which another suit for ejectment is pending was taken on rent by the defendant vide rent note dated 2.7.1986 at the rate of Rs. 225/- per month besides house tax whereas Shop Nos. 16 and 18 were taken on rent by M/s Hind Furniture Emporium, in which defendant and his brother are partners vide rent note dated 10.5.1985 at a monthly rent of Rs. 425/- per month, besides house tax etc. The shop in dispute i.e. shop No. 19 was taken on rent by the defendant on 1.6.1989. The tenancy of all these shops came into existence at different times. Shops No. 17 and 19 were taken on rent by the defendant in his individual capacity at different times. Shops No. 16 and 18 were taken by the firm at different times. It was denied that shop No. 19 is not a shop but a small store. Plaintiff moved an application for striking off the defence of the defendant as he was not depositing the admitted rent. Matter went to the High Court in revision and the High Court directed the respondent to deposit the admitted rent at the rate of Rs. 400/- alongwith interest up to the date fixed by the trial Court, otherwise the defence of the defendant shall be struck off as provided under Order 15 Rule 5 CPC. Thereafter, as per direction of the High Court the defendant deposited on 26.7.1997 the difference of the admitted rate of rent which was Rs. 400/- per month. The payment was accepted by the plaintiff under protest. Defendant on 28.7.1997 deposited the balance amount of admitted rent to cover the objection of the plaintiff. Plaintiff again moved an application for striking off the defence of the defendant which was accepted by the trial Court but in revision the order was set aside by the High Court and it was accepted that the deposit/payment by

the defendant was well within time and as per direction of the High Court.

10. Vide order dated 28.9.1999, Civil Judge (Jr. Division), Jagadhri declined the defendant's prayer to amend the written statement.

11. I have heard the learned counsel for the parties and have gone through the record.

12. Learned counsel for the petitioner submitted that the proposed amendment should have been allowed as prior to the institution of this suit, notice terminating his tenancy had been served upon him. He gave reply to that notice. In reply to that notice, he had clearly stated that the shop was constructed prior to 1979 and the rate of rent was Rs. 50/- p.m. and not Rs. 400/- p.m. as alleged by the plaintiff. While in para 1 of the notice dated 14.2.1990, plaintiff had averred that he was owner of shop No. 19 situated in Anant Market, Civil Lines, Jagadhri, which was constructed in December, 1984 and he (defendant) took the shop at a monthly rent of Rs. 400/- from the plaintiff on 1.6.1989 and that in reply to this para the defendant stated that the shop was constructed prior to 1979 and the rate of rent was Rs. 50/- p.m. and not Rs. 400/- as alleged by the plaintiff. In reply to para 3 of the notice defendant had alleged that rent for the last 8 months amounting to Rs. 400/- was due to the plaintiff from the defendant which he was always ready and willing to pay to the plaintiff but was not paid because plaintiff had refused to issue receipt. In para 3 of the notice, plaintiff had claimed that rent for the period 1.6.1989 to 31.1.1990 i.e. for 8 months amounting to Rs. 3200/- was due which the defendant had failed to pay. It was submitted by the learned counsel for the petitioner that the proposed amendment should have been allowed as through the proposed amendment the admission erroneously made was to be withdrawn. It was submitted that the admission erroneously made can always be withdrawn. It was submitted by the learned counsel that the plaintiff had served notice on the defendant prior to the institution of the suit terminating his tenancy, where-through he had asked for arrears of rent to the tune of Rs. 3200/- at the rate of Rs. 400/- p.m. from 1.6.1989 to 31.1.1990. The defendant had given reply to that notice. Through his reply he had averred that he was in arrears of rent the tune of Rs. 400/- i.e. at the rate of Rs. 50/- p.m. for a period of 8 months. He was always ready and willing to pay rent. He could not make payment because he (Ranbir Singh) was demanding receipt and he (Neeraj Kumar) was not issuing any receipt. In para 4 of the plaint there is averment that the monthly tenancy of the defendant was terminated by the plaintiff through notice dated 14.2.1990. In para 6 of the plaint there is averment that the defendant received notice and sent false reply to the notice.

13. Learned counsel for the petitioner submitted that the petitioner had made his stand clear with regard to the rate of rent through his reply to the notice, terminating his tenancy and if through inadvertence he had instead of denying para 2 of the plaint which concerned the rate of rent he had stated that para 2 of the plaintiff is admitted, he should not be kept tied to the admission erroneously made by him in the written statement when his categorical stand through reply submitted to the notice was that rate of rent was Rs. 50/- p.m.

14. Learned counsel for the respondent on the other hand submitted that in view of the observations made by Hon"ble V.K. Jhanji, J. that Rs. 400/- per month was admitted rate of rent, Rs. 400/- per month was admitted rate of rent and the defendant should not be allowed to amend his written statement now. Vide order dated 30.3.1999 passed in CM No. 1510-CII of 1999 in CR No. 5517 of 1999, Hon"ble V.K. Jhanji, J. in exercise of powers vesting in the Court u/s 148 of the CPC extended the time for depositing the amount and it was ordered that the amount deposited by the defendant on 26.7.1997 and 28.7.1997 shall be taken to be a valid deposit. The order striking off the defence of the defendant was accordingly set aside and the trial Court was directed to dispose of the suit expeditiously. It was submitted that the tenant had tendered rent @ 400/- p.m.

15. In my opinion, the proposed amendment should be allowed as the defendant is always within his right to withdraw an admission erroneously made by him. In this case, the defendant has stated that he should have denied para 2 of the plaint in his written statement, whereas in reply to para 2 of the plaint, he has stated that para 2 of the plaint is admitted. He should have said "para 2 of the plaint is denied". Normally, it is for the plaintiff to prove the rate of rent which he alleges it is. In this case, however, it is for the defendant to prove that the rate of rent was Rs. 50/- p.m. because it will be for him to prove that the admission made by him had been made by him erroneously. If the proposed amendment is allowed, there will be no change so far as the nature of the defence is concerned. Plaintiff is seeking to eject the defendant saying that the shop was constructed in December, 1984 i.e. within 10 years preceding the date of the suit and as such the shop is exempt from the provisions of the Haryana Urban (Control of Rent and Eviction) Act, 1973. Defendant's defence is that the shop was completed prior to the year, 1979 and the Civil Court had no jurisdiction to entertain the suit as the tenancy of the defendant is protected under the provisions of the Haryana Urban (Control of Rent and Eviction) Act, 1973. Through incorporating the proposed amendment, defendant is not seeking to take a somersault against his defence to ejectment. He is sticking to the same defence so far as plaintiff's claim to ejectment is concerned. Plaintiff's claim to ejectment is not the basis of rate of rent but its basis is the age of the shop when the ejectment suit was filed.

16. In view of what has been said above, the revision is allowed subject to payment of Rs. 2200/- as costs and the impugned order is set aside. The proposed amendment is allowed to be incorporated in the written statement by the defendant. Since the defendant is to continue to tender rent, he will continue to tender rent at the rate of Rs. 400/- p.m. because of the initial presumption being in favour of the plaintiff that the rate of rent is Rs. 400/- p.m.