

Smt. Pushpa Bansal and Others Vs Smt. Kuldeep Kaur and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: July 17, 2012

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 151, 152
Constitution of India, 1950 â€” Article 227
East Punjab Urban Rent Restriction Act, 1949 â€” Section 13

Hon'ble Judges: Jaswant Singh, J

Bench: Single Bench

Advocate: J.K. Puri, for the Appellant;

Final Decision: Dismissed

Judgement

Jaswant Singh, J.

Tenant/Judgment Debtor (hereinafter referred to as the petitioner) has, in the present revision petition under Article 227

of the Constitution, assailed the order dated 25.4.2012 passed by the learned Rent Controller, UT Chandigarh whereby on the application u/s 152

read with Section 151 CPC preferred by the legal representatives of Decree holder/landlord, during the execution application seeking enforcement

of the ex parte eviction order dated 14.10.2009, the learned Rent Controller, Chandigarh has permitted correction of an accidental omission qua

exclusion of words ""bonafide use and occupation"" in the operative part of the ex parte eviction order dated 14.10.2009. Learned counsel for the

petitioner/tenant contends that the correction permitted to the effect that in the operating part of the ex parte eviction order dated 14.10.2009 the

learned Rent Controller has permitted the inclusion of the decree being also on the basis of bonafide necessity and personal use and occupation of

the landlord is patently illegal being not supported by any evidence on record. He submits that it virtually amounts to reviewing the previous decree

without there being any legal basis.

2. After hearing the learned counsel for the tenant/petitioner, this court is not persuaded to accept the plea of the petitioner/tenant and, therefore,

the same is liable to be rejected.

3. Briefly noticed facts are that landlord Randhir Singh filed an eviction application of the petitioner/tenant Satpal Bansal from Shop No. 115/2,

Main Bazar, Near Library, Burail, UT Chandigarh u/s 13 of the East Punjab Urban Rent Restriction Act, 1949 on two grounds i.e. non-payment of

rent and bonafide use and occupation/necessity for opening an office in the demised premises. The petitioner tenant contested the claim by filing a

written statement including a counter claim. On the basis of the pleadings a specific issue No. 2 relating to the bonafide use and occupation was

framed vide order dated 5.9.2001. For ready reference the same is reproduced below:

Whether the respondent is liable to be evicted from the premises in dispute as petitioner requires the same for his own bonafide use and

occupation? OPR.

4. Admittedly, the petitioner/tenant vide order dated 9.12.2005 was proceeded ex parte and his counter claim dismissed in default. Thereafter, on

the basis of un rebutted evidence of the landlord, a decree evicting the petitioner was passed. It is during the execution it was realised by the legal

representatives of the landlord that in the operative part the relief of eviction on the basis of bonafide necessity was inadvertently omitted.

Accordingly, they made an application(P2). Petitioner filed reply to the same and thereafter the impugned order dated 25.4.2012 was passed.

5. Perusal of the order clearly reveals that it was noticed that in paras 8 and 9 of the ex parte eviction order dated 14.10.2009, it was clearly

mentioned that the "landlord had filed the eviction application on the basis of non-payment of rent and bonafide necessity/ personal use and

occupation" and to support his pleas he had led evidence in the shape of testimonies of PW1 to PW3. The evidence adduced by the landlord had

gone un rebutted and in this view of the matter the ex parte eviction order was passed. Learned Rent Controller by relying on the judgment of

Hon'ble the Supreme Court in Niyamat Ali Molla v. Sonargon Housing Co-operative Society Ltd. 2007 ACJ 460(SC), has ordered the

correction of inadvertent mistake. Reasoning is contained in para 7 of the order which reads as under:-

7. After thoughtful consideration, it is observed that there is a force in the line of the reasoning adopted by the counsel for the applicant as learned

counsel for respondent is not able to rebut the specific and cogent contentions that inadvertent due to typographical mistake the word "bonafide

use and occupation" do not find mention in the operative part of the order/concluding para of the ex parte order dated 14.10.2009. Furthermore

correction of inadvertent typographical mistake in the operative part of the order/concluding para of the ex parte order dated 14.10.2009 will be in

consonance with the mandate of Section 152 CPC 1908 which empowers the Court to correct its own error in a judgment, decree or order from

any accidental slip or omission. The principle behind the said provision is that nobody shall be prejudiced by an act of Court and record of court

must reflect true state of affairs. In this regard reliance can be placed upon the case law titled as Niyammat Ali Molla v. Sonargon Housing Co-

operative Society Ltd. 2007 (3) ACJ 460 (S.C.). Furthermore the Section 152 CPC 1908 is based on two important principles: (i) that an act of

Court shall prejudice no party and (ii) Courts have the duty to see that their records represent the correct state of affairs. In proceedings for

amendment of decree, it is not to be seen what relief was sought by the parties in their pleadings but the enquiry is confined only to ascertain

whether the decree correctly expresses what was really decided. Furthermore the judgment has to be read in entity and not in parts. Furthermore

the provision of Section 152 must be construed liberally and not in a pedantic manner. Furthermore, no prejudice is going to be caused to

respondent as the relevant application for setting aside ex parte order and objections to execution are still pending.

6. It is thus evident that the learned Rent Controller has exercised its jurisdiction to order the correction of accidental omission in the ex parte

eviction order dated 14.10.2009 strictly within the parameters laid down by Hon"ble the Supreme Court in Niyamat Ali's case (supra) and even

otherwise no prejudice would be caused to the tenant/petitioners as their application for setting aside the ex parte eviction order dated 14.10.2009

in any case is pending. In view of the above scenario, I find no legal infirmity in the impugned order to invoke extraordinary jurisdiction of this

Court under Article 227 of the Constitution. Resultantly, the present revision petition stands dismissed.