

M/s Subhash Oil Company Vs Balwant Rai Tayal

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Feb. 12, 2001

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Order 30 Rule 1, Order 30 Rule 2, Order 30 Rule 3, Order 30 Rule 4, Order 30 Rule 4(2)

Contract Act, 1872 â€” Section 45

Haryana Urban (Control of Rent and Eviction) Act, 1973 â€” Section 13, 15(2)

Citation: (2001) 3 CivCC 376 : (2001) 3 CivCC 376 : (2001) 3 RCR(Civil) 657

Hon'ble Judges: J.S. Narang, J

Bench: Single Bench

Advocate: Mr. Ashok Aggarwal and Mr. Alok Jain, for the Appellant; Mr. R.S. Mittal, Senior Advocate and Mr. Yashwinderpal Singh, for the Respondent

Judgement

J.S. Narang, J.

The facts which need to be noticed are that a petition u/s 13 of the Haryana (Control of Rent and Eviction) Act, 1973

(hereinafter referred to as ""the Act"") has been filed by respondent No. 1 ""Shri Balwant Rai Tayal"" against M/s Subhash Oil Company through its

partner Shri Varinder Kumar Tayal son of Shri Balwant Rai Tayal and Shri Raghu Nath Sahai. Respondent No. 1 claimed that he is the owner and

landlord of the demised property which had been rented out to M/s. Subhash Oil Company a partnership firm. The ejection had been asked for

on the ground that respondents are in arrears of rent since January 1, 1995, the respondents have materially diminished the value and utility of the

demised premises and that the respondents have unauthorisedly constructed rooms but on the said ground earlier application filed had been

dismissed vide order May 27, 1994 and that at the time of filing the present application for eviction the against appeal the said order is stated to be

pending before the Appellate Authority. It is noticed in the eviction order dated February 27, 1998 passed by the learned Rent Controller that the

notice of the application was served and that the said respondents were represented by a counsel but later on no one appeared and a sequel

thereto ex parte proceedings had been ordered vide order dated March 19, 1997.

2. In this view of the matter the eviction petition was tried and decided without any issues having been struck between the parties and only on the

ex parte evidence led by the landlord i.e. Shri Balwant Rai Tayal.

3. It is this order against which the present petitioners were aggrieved and the appeal had been filed on May 21, 1998. The claim of the appellant-

petitioner is that M/s. Subhash Oil Company was no doubt a partnership concern and that there were three partners namely Varinder Kumar

Tayal, Phool Chand and Raghu Nath Sahai. It is alleged that Shri Varinder Kumar Tayal retired from the partnership w.e.f. January 31, 1972 and

that the deed of retirement was executed on March 27, 1972. Thereafter, Raghunath Sahai also retired from the said partnership w.e.f. December

15, 1975. Resultantly, the said firm became the sole proprietary concern of Shri Phool Chand. It is further alleged that there is inter se litigation

between the parties which is pending in various civil Courts but the factual and effective possession of the assets of the firm has been that of Shri

Phool Chand. It is also disclosed that Shri Phool Chand died on June 1, 1995 and that the present petitioners succeeded to the assets and all kind of

rights of Shri Phool Chand in accordance with law. As such, being the proper and necessary parties should have been impleaded before the

learned Rent Controller. The order having been obtained without the necessary party having been impleaded, the eviction order against the firm

named in the order is not sustainable. However, the petitioners claimed themselves aggrieved of the order and, therefore, challenged the same by

way of appeal u/s 15(2) of the Act. It shall be apposite to notice the relevant portion of the provision which is reproduced below :-

15. Appellate and revisional authorities. - (1) The State Government may, by a general or special order, by notification, confer on such officers

and authorities as it may think fit, the powers of appellate authorities for the purposes of this Act, in such area or in such classes of cases as may be

specified in the order.

(2) Any person aggrieved by an order passed by the Controller may, within thirty days from the date of such order or such longer period as the

Appellate Authority may allow for reasons to be recorded in writing, prefer an appeal in writing to the Appellate Authority having jurisdiction. In

computing the period of thirty days the time taken to obtain a certified copy of the order appealed against shall be excluded.

(3) to (6) xxx xx xxx xx

4. The Appellate Authority dismissed the appeal on the ground that eviction petition could be filed against the partnership firm and that the service

could be effected upon any of the partners. So far as claim for the legal representatives of the partner is concerned, reliance has been placed on

Order XXX rule 4 of the Code of Civil Procedure, vide which it has been found that it was not necessary for the landlord to have impleaded the

legal representatives of Shri Phool Chand who admittedly died before the filing of the ejectment application. It has been further observed by the

Appellate Authority that no infirmity can be found in the order but the appellants are entitled to take appropriate pleas before the executing Court

as may be advised. The appeal has been dismissed on the ground that it is not maintainable by the petitioners who were not parties to the judgment

before the learned Rent Controller.

5. Aggrieved of the order dated June 15, 1999, the present petition has been filed. Along with the petition, an application has been for bringing on

record documents Annexures P1 to P26. It has been averred that before the Appellate Authority, an application had been filed for permission to

lead additional evidence for corroborating the fact that Shri Varinder Kumar Tayal and Shri Raghunath Sahai had retired from the partnership and

that the said firm became the sole proprietary concern of Shri Phool Chand and upon his death the legal heirs i.e. the present petitioners succeeded

to the rights and liabilities of the sole proprietary concern. It is averred that though no specific order had been passed on the application but by ipse

dixit the application can be said to have been dismissed without application of mind, it is further averred that nothing in respect thereof has been

mentioned in the impugned order by the Appellate Authority.

6. During the course of arguments it was considered appropriate that record of the courts below should be requisitioned so that the correct set of

facts are ascertained. From the record it is seen that no order relating to the said application has been passed by the Appellate Authority.

7. Learned counsel for the petitioners has argued that the bare perusal of Section 15(2) of the Act shows that the appeal is maintainable by any

aggrieved person. It has also been contended that the Appellate Authority was required to determine as to whether the petitioners are aggrieved

persons or not and this could be determined/ascertained only when the application for seeking additional evidence had been allowed and the

documents sought to be produced on the court file were perused. Unfortunately, none of the kind had been done, as such the conclusion of the

Appellate Authority that appeal is not maintainable by the petitioners is wholly erroneous and not sustainable in law. It is again required that Rules

1, 2, 3 and 4 of order XXX should be noticed which read as under :-

1. Suing of partners in name of firm :-

(1) Any two or more persons claiming or being liable as partners and carrying on business in India may sue or be sued in the name of the firm (if

any) of which such persons were partners at the time of the accruing of the cause of action, and any party to a suit may in such case apply to the

court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in such firm,

to be furnished and verified in such manner as the Court may direct.

(2) Where persons sue or are sued as partners in the name of their firm under sub-rule (1), it shall, in the case of any pleading or other document

required by or under this code to be signed, verified or certified by the plaintiff or the defendant, suffice if such pleading or other document is

signed, verified or certified by any of such persons.

(Explanation:- This rule applies to a joint Hindu family trading partnership)

2. Disclosure of partner's names. - (1) Where a suit is instituted by partners in the name of their firm, the plaintiffs or their pleader shall, on demand

in writing by or on behalf of any dependent, forthwith declare in writing the names and places of residence of all the persons constituting the firm on

whose behalf the suit is instituted.

(2) Where the plaintiffs or their pleader fail to comply with any demand made under sub-rule (1), all proceedings in the suit may, upon an

application for that purpose, be stayed upon such terms as the Court may direct.

(3) Where the names of the partners are declared in the manner referred to in sub-rule (1), the suit shall proceed in the same manner, and the same

consequences in all respects shall follow, as if they had been named as plaintiffs in the plaint.

Provided that all proceedings shall nevertheless continue in the name of the firm, but the name of the partners disclosed in the manner specified in

sub-rule (1) shall be entered in the decree.

3. Service. - Where persons are sued as partners in the names of their firm, the summons shall be served either -

(a) upon any one or more of the partners, or

(b) at the principal place at which the partnership business is carried on within India upon any person having, at the time of service, the control of

management of the partnership business there, as the Court may direct, and such service shall be deemed good service upon the firm so sued,

whether all or any of the partners are within or without India:

Provided that, in the case of a partnership which has been dissolved to the knowledge of the plaintiff before the institution of the suit, the summons

shall be served upon every person within India whom it is sought to make liable.

4. Right of suit on death of partner. - (1) Notwithstanding anything contained in Section 45 of the Indian Contract Act, 1872 (9 of 1972), where

two or more persons may sue or be sued in the name of a firm under the foregoing provisions and any of such persons dies, whether before the

institution or during the pendency of any suit, it shall not be necessary to join the legal representative of the deceased as a party to the suit.

(2) Nothing in sub-rule (1) shall limit or otherwise affect any right which the legal representative of the deceased may have -

(a) to apply to be made a party to the suit, or

(b) to enforce any claim against the survivor or survivors.

5 to 10. xxx xxx xxx xxx".

8. It is argued by the learned Counsel for the petitioners that admittedly Phool Chand who was one of the partners of the erstwhile partnership

concern has not been impleaded and admittedly the factum of death of Phool Chand was within the knowledge of respondent No. 1 i.e. the

landlord. If the factum of death is admitted to be in the knowledge of the landlord, necessarily partnership can be said to have dissolved unless the

same is saved by virtue of the savings contained in the partnership deed. However, nothing can be said to be in the knowledge of the landlord so

far as that fact is concerned. Thus according to rule 2 of Order XXX, it was incumbent upon the landlord to have sought information with regard to

the existing partners of the firm. Unfortunately none of the kind had been done and that the application for ejectment has been filed by im-pleading

the firm through one of the remaining partners i.e. Shri Varinder Kumar Tayal and additionally the other partners has also been impleaded. It is

further argued that the assets of the partnership firm were and have been and continued to be in effective control of the legal representatives of Shri

Phool Chand. As a sequel thereto in pursuant to the proviso to Rule (3), the service was necessarily required to be effected upon the legal

representatives who have been and are in effective control of the assets. If the said provision had been followed in letter and spirit, the entire matter

would have been clarified so far as retirement of Shri Varinder Kumar Tayal and Raghunath Sahai is concerned and the factum that the firm had

become the sole proprietary concern of Shri Phool Chand and that after his death the assets, rights and liabilities having been devolved upon the

legal heirs. It is obvious that this provision was completely ignored. The factum of non-disclosure of the true and correct facts by the applicant that

is the landlord, rendered the application for ejectment fit for dismissal.

9. It is further argued that the Appellate Authority was not at all correct in dismissing the appeal on the ground that by virtue of rule 4 of Order

XXX, it was not necessary that the legal representatives of the deceased partner should be joined as a party to the suit. Unfortunately, the

Appellate Authority lost sight of sub-rule (2) of Rule 4 Order XXX wherein it is provided that sub-rule (1) shall not limit or otherwise affect the

right of the legal representatives of the deceased and they shall have their right to apply to be made party or enforce any claim against the survivor

or survivors. Thus, meaning thereby that the legal heirs have claimed themselves to be aggrieved by the order passed by the Rent Controller and,

therefore, in the capacity of legal heirs they are well within their rights to have filed the appeal before the Appellate Authority. The Appellate

Authority was definitely required to go into the fact as to whether the petitioners are really aggrieved persons by the order of the Rent Controller. If

any such application had been filed before the learned Rent Controller during the pendency of the application for ejectment would he have

disallowed the application ? If that application had been allowed by the Rent Controller, the natural consequences are that after the decision of the

application by the Rent Controller, the petitioners would be definitely acceptable as ""aggrieved persons"" and would be well within their rights to

maintain the appeal. It is obvious that this provision and this argument has not been discussed by the Appellate Authority, as such, the impugned

order by the Appellate Authority is not sustainable under law.

10. In this regard reliance has been placed by the learned Counsel for the petitioners on the judgment of the Apex Court that an aggrieved person

from the judgment and decree of the trial Court would be well within his rights to file the appeal. However, in that situation only fact which really

become discernible by the appellate court is, Whether such appellant is really aggrieved of the order ? In the present case, no such discussion has

been noted by the Appellate Authority nor any observation has been made in this regard. The precedents which have been relied upon by the

learned Counsel for the petitioners are Bar Council of Maharashtra Vs. M.V. Dabholkar and Others, . It has been categorically observed by the

Apex Court that ""no narrow, pedantic, technical or centenary construction can be blindly applied. On the other hand, a spacious construction,

functionally informed by the social conscience and the salutary purpose of the enactment must illumine the judicial effort....."". It has also been

observed..... the words ""aggrieved person"" are found in civil statutes. Meaning of the words ""person aggrieved"" will have to be ascertained with

reference to the purpose and the provision of the statute. Sometimes it is said that the words ""person aggrieved"" correspond to the requirement of

locus standi which arise in relation to judicial remedies.....

11. It is argued that in view of the dicta of the Apex Court, it was incumbent upon the Appellate Authority to have determined and returned a

categorical finding as to whether the petitioner is an ""aggrieved person"" or not because the said determination would require specific mention in

respect of the locus standi of the petitioners whereas the appellate authority has virtually summarily dismissed the appeal relying only on rule 4 of

order XXX.

12. It is also argued that no doubt, CPC as such is not applicable to the proceedings before the Rent Controller and the Appellate Authority but

the principles are attracted in such kind of a situation where the "person aggrieved" from the order is required interpreted and also when it is also to

be seen in totality whether the landlord has correctly filed the application against the partnership firm, meaning thereby has he asked for disclosure

of the partners of the firm or he has alternatively specifically averred in the application that so and so are partners and that the said information has

been derived from the documents filed with the competent authority. The perusal of the application shows that no such averment has been made in

application. In this view of the matter, the approach of the applicant- landlord was not fair and honest and that the application for ejectment would

have been dismissed on this ground alone, had the opportunity been granted to the petitioner for bringing on record the true and correct facts

relating to the affairs of the partnership.

13. Learned counsel for the respondent landlord has controverted the argument of the learned Counsel for the petitioner and has placed reliance

very heavily on Order XXX Rules 3 and 4 C.P.C. The argument is that the applicant was not required to keep himself posted with regard to

subsequent changes which had occurred in the partnership. Admittedly, Shri Varinder Kumar Tayal was one of the partners and as per rule 3 the

service had been effected upon Shri Varinder Kumar Tayal and that service upon one of the partners is sufficient service on the partnership firm. It

is a separate matter that after having put in appearance before the learned Rent Controller the said partners absented himself as no one had

appeared on behalf of the respondents.

14. It is argued that the knowledge of factum of death of Shri Phool Chand does not effect the application for ejectment and the same has been

correctly filed. It is specifically provided in rule 4 of Order XXX that the plaintiff may choose to implead legal representatives of the deceased

partner and that it is not necessary to implead the legal representatives of the said partners. Thus in this view of the matter, the petitioners were

neither a necessary party nor a proper party and that the application had been correctly filed against the partnership firm which was/is the tenant of

the landlord.

15. It is further argued that the disclosure of partners name is not required to be obtained by the plaintiff because when the suit is being filed by the

parties in the name of the firm then on demand by defendants the names of partners of the partnership firm are required to be disclosed by the

plaintiff. Rule 2 of Order XXX would become operative if the suit is instituted by the partners in the name of their firm and it is at that time if it is

demand of the plaintiff's name and place of residence of all persons constituting the firm on whose behalf the suit is instituted shall be required to

be disclosed. The case of the applicant is governed by rule 1 of Order XXX and in pursuance thereto the application for ejectment had been

correctly framed and that proper and necessary facts had been duly disclosed. The service also had been effected in accordance with rule 3 i.e. the

service was effected upon one of the partners namely Shri Varinder Kumar Tayal. As such, no infirmity or illegality can be said to be found in

respect thereof.

16. So far as impleadment of legal representatives of the deceased partner is concerned, the proviso to rule 3 of Order XXX categorically

provides that the service has to be effected upon that person whom the plaintiff seeks to make liable. In the present case, the disclosure had been

accordingly, as such, it was not incumbent upon the applicant landlord to have served the legal representatives of the deceased partner. The

Appellate Authority has come to a correct conclusion that in view of rule 4 of Order XXX it was not necessary to join the legal representatives of

the deceased partner. Further the Appellate Authority has categorically observed that in case of any ambiguity the appellants/petitioners shall be

well within their rights in raising such kind of objections before the executing Court and the proper decision shall be rendered accordingly. So far as

the right of the legal representatives to be impleaded as a party provided under sub-rule (2) of Rule 4 of Order XXX is concerned, there is no

cudgel with that but in any case, the application has to be filed at the appropriate time. In the present case, no such application has been filed

before the learned Rent Controller, therefore relying on importing sub-rule (2) of rule 4 at this stage is too far fetched.

17. Learned counsel for the respondents has placed reliance on *The Upper India Cable Co. and others v. Bal Kishan*, AIR 1984 Supreme Court

1381 wherein the principle as to at what stage the legal representatives are required to be impleaded as a party or not has been discussed

threadbare. It has been categorically observed that in view of rule 4 it is not necessary that legal representatives of the deceased partner should be

necessarily impleaded as a party.

18. However, it has been brought to my notice by the learned Counsel for the respondent that upon inspection of the record of the courts below it

has been seen that the appeal has been filed by the lawyer but no power of attorney is stated to have been executed in favour of the lawyer and

that no partnership deed has been annexed whereby the appeal by the firm could be said to be maintainable. It is elicited from the memo of parties

before the Appellate Authority that the appeal is stated to have been filed by the firm through Shri Subhash Chand but his status vis-a-vis the said

partnership has not been clarified anywhere. The appeal cannot be said to have been filed by the appellants mentioned in the Memorandum of Appeal

before the Appellate Authority. It has been noticed that in the grounds of appeal before the Appellate Authority, a note is appended by the counsel

which reads :-

Note :- Power of attorney is attached with the original file.

Sd/-

Counsel.

19. Thus, admittedly, the appeal is not maintainable at all. This in itself is sufficient ground to note that no proper appeal had been presented,

therefore, none was maintainable before the Appellate Authority. Thus, even otherwise, at this stage it shall be appropriate to argue that since no

proper appeal had been presented therefore, the present petition is also not maintainable and, therefore, the same deserves to be dismissed.

20. Learned counsel for the petitioners has argued that the power of attorney given in the first instance is good power of attorney as the appeal is

nothing but continuation of the suit, it is further contended that the power of attorney has been filed before the executing Court. Therefore, the

power of attorney can be stated to be on the original file.

21. I have noticed the rival contentions of the learned Counsel for the parties. From the perusal of the judgment of the Appellate Authority and the

record pertaining thereto, I am convinced beyond any doubt that the Appellate Authority has not given categorical finding as to whether the

appellants- petitioners are "aggrieved persons" or not. In the absence of the same, the Appellate Authority was not right in dismissing the appeal on

the ground that the appellants were not necessarily required to be joined as parties before the learned Rent Controller. The appellate court has not

discussed at all the effect of sub-rule (2) of rule 4 and at the same time has not discussed at all that the applicant-landlord has not averred in the

application before the Rent Controller as to who were partners and who has died and that on the death of the said partner the firm stood dissolved

or not. All these facts were required to be ascertained by the Appellate Authority before coming to the conclusion of maintainability of the appeal.

It was necessarily required that the application for additional evidence should have been dealt with by the Appellate Authority and thereafter a

composite order with regard to the maintainability of the appeal could have been passed.

22. So far as non-filing of power of attorney and its effect is concerned no such argument has been raised before the Appellate Authority. It shall

not be appropriate for me to make any observation in this regard. Since I am contemplating to set aside the impugned order, therefore, I leave that

point open to be decided by the Appellate Authority, if so raised.

23. In view of the above discussion, the impugned order dated June 15, 1999 of the Appellate Authority is set aside, the Appellate Authority is

directed to decide the appeal afresh and so also the application for leading additional evidence be decided in accordance with law. The petition is

allowed in the above terms with no order as to costs.

24. Before parting with the judgment it shall be in the fitness of things that the appeal be decided within six months from the date when the parties

put in appearance before the Appellate Authority. The parties through their counsel are directed to appear before the Appellate Authority on

March 5, 2001, and the Appellate Authority is directed to render final judgment within six months from March 5, 2001, office is directed to

transmit the record of the court below forthwith along with the copy of the judgment.

25. Order accordingly.