

Dalip Singh Vs Gurmeet Singh and Another

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Sept. 29, 2010

Acts Referred: East Punjab Urban Rent Restriction Act, 1949 " Section 13

Citation: (2011) 161 PLR 546 : (2011) 2 RCR(Civil) 569 : (2011) 1 RCR(Rent) 254

Hon'ble Judges: Hemant Gupta, J

Bench: Single Bench

Judgement

Hemant Gupta, J.

The Petitioner filed a petition u/s 13 of the East Punjab Urban Rent Restriction Act, 1949 for eviction of Respondent

No. 1- Gurmeet Singh. The Petitioner has sought the eviction of the said Respondent for the reason that he requires the demised premises i.e. Flat

No. 3055/1, Sector 44-D, Chandigarh, for his personal necessity. In the said eviction petition, Respondent No. 1-Gurmeet Singh suffered a

statement on 05.08.2005, which reads as under:

Statement of Gurmeet Singh son of Joginder Singh resident of 3055/2, Sector 44-D, Chandigarh alongwith counsel Mr. Manpreet Singh I will

vacate the demised premises on or before 31.07.2007. RO&AC Sd/- 05.08.2005

2. On the basis of said statement, the Petitioner also suffered a statement on the same day, which reads as under:

Statement of Dalip Singh son of Avtar Singh resident of H. No. 1 103, Phase-5, Mohali alongwith Mr. Kailash Chander, Advocate. 1 withdraw

the present petition in view of the statement suffered by Respondent. RO&AC Sd/- 05.08.2005

3. On the basis of aforesaid statements, the learned Rent Controller passed an order on 05.08.2005 itself, which reads as under:

Present: Mr. Kailash Chander, Advocate, counsel for the Petitioner with Petitioner. Mr. Manpreet Singh, Advocate, counsel for the Respondent

with Respondent. File taken up today on the application moved by the Petitioner through counsel. Respondent appeared through counsel Mr.

Manpreet Singh, Advocate, and suffered a statement that he will vacate the demised premises on 31.07.2007. Petitioner suffered a statement that

in view of the assurance given by the Respondent, he does not want to pursue the petition and withdraw it. In view of statement, petition is

dismissed as withdrawn. File be consigned to the record room after due compliance. 05.08.2005

4. Since Respondent No. 1-Gurmeet Singh failed to vacate the demised premises on or before 31.07.2007 in terms of his statement made before

the learned Rent Controller on 05.08.2005, the present contempt petition for initiating contempt proceedings was filed on 16.08.2007. In reply to

the said proceedings, Respondent No. 1 alleged that the statement made before the learned Rent Controller was result of fraud and he has filed an

application for review of the order dated 05.08.2005. Such application has been filed on 10/14.12.2007. The Petitioner controverted the stand of

Respondent No. 1 by filing a detailed rejoinder pointing out that the application for review has been filed after 28 months. From the perusal of the

proceedings of the present petition, it is apparent that such application has been filed after the filing of the present contempt petition and, in fact,

after the presence of Respondent No. 1 was secured through bailable warrants and when Respondent No. 1 appeared before this Court on

16.09.2007. However, Respondent No. 2 relies upon an agreement dated 27.10.2003 produced on record as Annexure R-2. The Petitioner has

denied any such agreement in his replication and it was asserted that Respondent No. 1 has not appended any document indicating any such sale

or sale agreement. From a reading of Annexure R-2, it transpires that the total sale consideration is fixed as Rs. 8 lac and Rs. 25,000/- was paid

as earnest money. As per clause-8 of the said agreement, the seller was to deliver actual vacant physical possession of the property at the time of

completion of bargain, the date for which was fixed as on or before 30.11.2003. Subsequently, Respondent No. 1 has filed an additional affidavit

alongwith C.M. No. 25496- CH of 2009 producing registration certificate, insurance policy, income tax return and electricity bills showing

possession of Devinder Singh Respondent No. 2 as Annexures R-6 to R-18. Devinder Singh-Respondent No. 2 has filed an affidavit dated

11.03.2010, wherein it is asserted that a sum of Rs. 5,75,000/- was paid to Dalip Singh-Petitioner in November, 2003 and the Petitioner handed

over the possession of the demised premises to the deponent and since then he is residing in the said premises. Respondent No. 2 relies upon the

same documents, as has been submitted by Respondent No. 1, in support of such plea. It is also pointed out by the learned Counsel for

Respondent No. 1 that the Petitioner has filed a fresh eviction petition, a copy of which has been appended as Annexure R-19.

5. A perusal of the proceedings before this Court shows that on 20.10.2008, respondent No. 1 was granted four weeks" time to comply with the

order dated 05.08.2005. The order dated 20.10.2008 reads as under:

The sole contention of the Respondent is that the order dated 5.8.2005 and the, undertaking filed by him has been procured by fraud. He claims to

have moved appropriate application before the Rent Controller. In so far as the order dated 5.8.2005 is concerned, it is still in operation.

Respondent has no option, but to comply with the order. Last opportunity of four weeks is allowed to the Respondent to comply with the order

dated 5.8.2005 and the undertaking given before the Rent Controller, failing which the Respondent shall be liable for punishment for contempt of

the Court. Learned Counsel for the Respondent submits that the Respondent may be allowed opportunity to move the Rent Controller for stay of

the operation of the undertaking/order dated 5.8.2005. Needless to say that there is no prohibition for the Respondent to move the appropriate

Court for such an order. List again on 17.12.2008.

6. Subsequently, on 21.10.2009 again, Respondent No. 1 was given opportunity to purge the contempt. The said order reads as under:

Heard learned Counsel for the parties at some length. Prima-facie, I am of the view that Respondent No. 1 has breached the undertaking given

before the Rent Controller, Chandigarh. However, before proceeding further, I deem it appropriate to give him an opportunity to purge the

contempt. List on 30.10.2009. Respondent No. 1 shall be present in the Court on the date fixed. The Respondent may file any additional affidavit,

if any, in his defence.

7. Later on 25.02.2010, this Court noticed that Respondent No. 1 has not purge the contempt and that Devinder Singh-Respondent No. 2 is real

brother-in-law of Respondent No. 1. The Court passed the following order:

On 21.10.2009, following order was passed:

Heard learned Counsel for the parties at some length. Prima-facie, I am of the view that Respondent No. 1 has breached the undertaking given

before the Rent Controller, Chandigarh. However, before proceeding further, I deem it appropriate to give him an opportunity to purge the

contempt. List on 30.10.2009. Respondent No. 1 shall be present in the Court on the date fixed. The Respondent may file any additional affidavit,

if any, in his defence.

Respondent No. 1 is present in person but has not purged the contempt. Counsel for Respondent No. 1 states that as the undertaking was

obtained by fraud, he has filed an application before the Rent Controller, Chandigarh, praying for withdrawal of the undertaking. It is further

submitted that Respondent No. 1 is not in possession of the flat as the flat is in possession of one Devender Singh pursuant to an agreement to sell,

executed by the Petitioner.

Heard. It is not denied that Respondent No. 1 filed an undertaking before the Rent Controller, Chandigarh, agreeing to vacate the premises on or

before 31.07.2007. In order to justify the violation of his undertaking, Respondent No. 1 has taken a stand though after the filing of this petition,

that the undertaking was obtained by fraud and that he is no longer in possession. To a specific query addressed to counsel for Respondent No. 1

about Devender Singh, counsel for Respondent No. 1 is unable to deny that Devender Singh is the real brother-in-law of Respondent No. 1.

Devender Singh has filed an application for being impleaded as a party. In view of what has been stated above, it would be appropriate to frame

charges against Respondent No. 1 under the Contempt of Courts Act. At this stage, at the request of counsel for Respondent No. 1, the case is

adjourned to 03.03.2010. Till then, order be kept in abeyance. However, Devender Singh and Respondent No. 2 are directed to be present in

person.

8. Still later on 03.03.2010, this Court passed the following order:

Respondent No. 1, admittedly, furnished an undertaking before the Rent Controller agreeing to vacate the tenanted premises on or before

31.07.2007. Admittedly, the premises have not been vacated. On 21.10.2009, an order was passed holding Respondent No. 1 prima-facie guilty

of breach of his undertaking made before the Rent Controller. However, an opportunity was granted to Respondent No. 1 to purge the contempt.

On 23.02.2010, Respondent No. 1 stated that he has filed an application before the Rent Controller for withdrawal of his undertaking as it has

been obtained by fraud. In addition, Respondent No. 1 stated that he is not in possession of the flat as the flat is in the possession of his brother-in-

law Devender Singh pursuant to an agreement to sell executed by the Petitioner. Be that as it may a person who voluntarily furnishes an

undertaking must abide by the undertaking. The stand taken by Respondent No. 1 that the undertaking was obtained by fraud or that he is no

longer in possession aggravates the contempt. Counsel for the Respondent No. 1 is called upon to address arguments on the question of sentence.

Devender Singh submits that he is in possession pursuant to an agreement to sell dated 27.10.2003 executed by the Petitioner. To a specific query

whether he has filed any suit for specific performance, the answer is in the negative. Counsel for Devender Singh is directed to file an affidavit

explaining his conduct. Adjourned to 12.03.2010.

9. With this factual background, the learned Counsel for the Petitioner argues that it was on the statement of Respondent No. 1 that he shall vacate

the demised premises on or before 31.07.2007, the Petitioner has withdrawn his eviction petition. Such statement was an undertaking to the Court

and acting upon such undertaking, the Petitioner has withdrawn his eviction petition. It is also argued that the statement before the Court was

implied admission of ground of eviction of personal necessity and thus, Respondent No. 1, who has voluntarily undertook to vacate the premises is

liable to be punished for willful and intentional disobedience to the undertaking given to the Court. He relies upon the judgments of Hon"ble

Supreme Court reported as Maruti Udyog Limited v. Mahinder C. Mehta and Ors. (2007) 13 SCC 220, Rama Narang Vs. Ramesh Narang and

Another, and Patel Rajnikant Dhulabhai and Anr. v. Patel Chandrakant Dhulabhai and Ors. (2008) 14 SCC 561. It is also contended that

Devinder Singh claims that the possession was delivered by the Petitioner, whereas Respondent No. 1, who was inducted as a tenant has never

restored possession to the Petitioner even after giving statement before the Court and, thus, the Petitioner was not in a position to deliver

possession to Respondent No. 2. In fact, Respondent Nos. 1 and 2 are near relations and have propounded false and fabricated agreement to sell

with a view to retain possession of the property. It is pointed out that Respondent No. 1 undertook to vacate the property in August, 2005

whereas, the said agreement is earlier in point of time i.e. 27.10.2003. The said agreement and the alleged delivery of possession in November

2003 is unbelievable, as Respondent No. 1 made statement in August, 2005 to handover possession. If he was not in possession, there was no

occasion with Respondent No. 1 to give offer to deliver possession.

10. On the other hand, learned Counsel for Respondent No. 1 has relied upon a Hon"ble Supreme Court judgment reported as Ferozi Lal Jain

Vs. Man Mal and Another, and Kaushalya Devi and Others Vs. Shri K.L. Bansal, to contend that there could not be eviction order against

Respondent No. 1, as the grounds of eviction as mentioned under East Punjab Urban Rent Restriction Act, 1949 are not satisfied. Reliance is also

placed upon Babu Ram Gupta Vs. Sudhir Bhasin and Another, wherein it has been held that the disobedience to the compromise decree does not

amount to contempt.

11. Having heard learned Counsel for the parties, I am of the opinion that the conduct of the Respondents is contumaciously that of willful and

intentional disobedience to the statement before the learned Rent Controller. It is not disputed that Respondent No. 1 is a matriculate and serving

in Punjab Police. The Petitioner has sought eviction of the premises for the reason that he requires the demised premises for his bona fide use and

occupation. The factum of giving statement that he shall vacate the premises on or before 31.07.2007 is with the knowledge that the Petitioner

required the premises for his bona fide use and by submitting to vacate the premises Respondent No. 1 impliedly admits the grounds of eviction.

Thus, acting on such representation, the Petitioner has withdrawn the eviction petition. Respondent No. 1 has made statement to the Court. Such

statement was solemn undertaking to vacate the demised premises. To contend that it is not an undertaking is incorrect and not tenable, as the

statement was clear and categorical that he will vacate the premises on or before 31.07.2007.

12. The judgments in Ferozi Lal Jain's and Smt. Kaushalya Devi's cases (supra) relied upon by the learned Counsel for Respondent No. 1, are of

no help to the arguments raised. In the aforesaid cases, the issue was whether the order of ejectment could be passed without one or the other

ground of eviction being satisfied. In the present case, the Petitioner has sought eviction of the tenant, inter alia, on the ground that he requires the

premises for his bona fide use and occupation. The statement that Respondent No. 1 shall vacate the premises implies that he admits the grounds

of eviction. Since the ground of eviction has been impliedly admitted by Respondent No. 1, it cannot be said that such statement violates the

provisions of Statute. As a matter of fact, the grievance of the Petitioner is willful disobedience in respect of the statement given to the Court. The

said statement discloses a civil contempt, dehors of the factum of ejectment order being passed against him or not.

13. In Balram Singh Vs. Bhikam Chand Jain and Others, , in a quashing petition for quashing of prosecution, the contemnors have given an

undertaking assuring to delete the design invented by Shri Bhikam Chand Jain, but still there was violation of the said undertaking. In the said

factual background, the Court held to the following effect:

7. We must take serious view of the conduct of the contemnors in committing a breach of the undertaking in view of the growing tendency to trifle

with the Court's orders based on undertakings with impunity....

8 ...The only question is whether the breach of the said undertaking amounts to contempt. To go beyond that might come into the field of

discussion of the merits of the case. It is true that the contemnors have deleted the caption or legend ""Design invented by Shri Bhikam Chand Jain

from the advertisements, brochures etc. issued by them, but instead they have prominently printed the photograph of Tikam Chand Jain, partner of

the said firm. Prima facie a reading of the advertisement, brochure etc. issued by the contemnors is bound to mislead the public. Faced with this

situation, learned Counsel for the contemnors in sheer desperation offered that the contemnors would drop the trade description ""Balram Septic

Tank". As a last resort, he contended that even if they are committed for contempt, they should be sentenced to pay a fine. It would be a travesty

of justice if the Court were to allow such gross contempt of court to go unpunished, without an adequate sentence and we find no mitigating

circumstances whatever not to pass a sentence of imprisonment. We accordingly commit the contemnors for contempt of court and sentence each

of them to undergo simple imprisonment for a period of three months and to pay a fine of Rs. 1000 or in default, to undergo simple imprisonment

for a further period of one month.

14. In Kanta Gupta v. V3 Additional District Judge , a tenant gave undertaking to vacate the premises, but subsequently the said tenant failed to

vacate the same. The Court held to the following effect:

13. The undertaking given to the court is unconditional, categoric and unqualified. It requires to be held that, as on the date of the undertaking the

contemner was in actual physical possession and was capable of complying with the terms of the undertaking. Bhagwandas, having regard to the

facts and circumstances appearing against him, cannot also be heard to the contrary. The contemner had undertaken not to induct any third person

into possession. Both of them are bound to act in aid and compliance of the undertaking. They have, purposefully and with a clear intention to flout

the undertaking, put up an untenable defence. We find mere is a wilful breach of the undertaking. The court has not only the power but in

appropriate cases the duty to exact obedience to the terms of the undertaking given to it.

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15. It was then submitted that Bhagwandas has been carrying on the business of "Marwari Bhoj" for several years now and that it would cause

immense hardship if immediate forcible dispossession is ordered. We think that having regard to the peculiar circumstances and the antecedent

history of the litigation, we should afford the contemner and her husband Bhagwandas an opportunity to purge themselves of the contempt by

delivering vacant physical possession to the complainants on or before October 30, 1990. If that is not done, upon a motion being made by the

complainant before the Additional District Magistrate, Meerut, the Magistrate will immediately take steps to evict Smt Kanta Gupta, Shri

Bhagwandas, their servants and agents or whomsoever they or either of them might have inducted into the premises and deliver vacant possession

of the first floor accommodation in Property No. 125 A, Purva Suthi Ganj, Begum Bridge Road, Meerut City to the complainants within one week

from October 30, 1990, if necessary with requisite police assistance and to report to this Court the fact of such delivery of possession.

15. In a recent judgment reported as *The State of Maharashtra and Another Vs. Super Max International Pvt. Ltd. and Others*, , the Hon"ble

Supreme Court considered the shift in the interpretation of rent laws and the need for a more balanced and objective approach to the relationship

between the landlord and tenant was emphasized. It was held to the following effect:

59. We may concede that the tenant in *Mani Subrat Jain Vs. Raja Ram Vohra*, , who was also an advocate was entitled to be doubly protected by

the law. We may also try to comprehend the legalese of the debate as reflected in the judgment. But we have a real problem in following the

message the decision in *Mani Subrat Jain Vs. Raja Ram Vohra*, gave to the ordinary man. That to go back on one's solemn word given to the

other side before a court of law is no sin. On the contrary one may derive rich dividend before the highest court of the land, provided one is a

tenant. To, sometimes, divorce logic from the law is one thing but to divorce morality altogether from the law is something quite different.

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66 ...The legislature intervened and brought in the Rent Act, severely restricting the grounds for enhancement of rent and for eviction of the tenant

from the rented premises, thus regulating the relationship between the landlord and the tenant beyond the general law under the Transfer of

Property Act, 1882. In this regard the Court responded in equal, if not greater measures. But after about three quarters of a century and three

generations later when things are no longer the same and the urban centres are faced with newer problems, some of those having their origin in the

Rent Act itself, there is the need to take a relook on the Court's attitude towards the relationship between the landlord and the tenant and to

provide for a more level ground in the judicial arena.

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71. We reaffirm the views expressed in *Satyawati Sharma (Dead) by LRs. Vs. Union of India (UOI) and Another*, and emphasise the need for a

more balanced and objective approach to the relationship between the landlord and tenant. This is not to say that the Court should lean in favour of

the landlord but merely that there is no longer any room for the assumption that all tenants, as a class, are in dire circumstances and in desperate

need of the Court's protection under all circumstances.

16. Keeping in view the aforesaid judgments, the statement given by Respondent No. 1 was to admit the ground of eviction and by seeking

concession from the Court sought deferment of handing over possession till 31.07.2007 i.e. almost two years. Respondent No. 1 has not chosen

to dispute the said statement soon after the same was made, but filed an application alleging it to be fraud only after contempt notice was received

by him. The plea of fraud is, prima facie, not tenable as it seems to have been prompted to remain in possession of the property having undertaken

to vacate the same before a competent Court of law.

17. The argument that Respondent No. 1 is not in possession and, in fact, Respondent No. 2 is in possession in pursuance of separate agreement

to sell is again misconceived. Respondent No. 1 was inducted as a tenant. It is not the case of Respondent No. 1 that he ever delivered possession

to the Petitioner. The agreement referred upon is prior to the statement made before the Court. Till such time the possession is delivered back to

the Petitioner, the Petitioner was not capable of delivering possession to Respondent No. 2, as is alleged by him. Respondent Nos. 1 and 2 are

near relations. It is an arrangement arrived at between Respondent Nos. 1 and 2 to defeat the rights of the Petitioner in respect of possession of

the property in which Respondent No. 1 has undertaken to vacate the premises.

18. Since the Respondents have failed to vacate the premises in spite of clear and categorical statement made by Respondent No. 1 before the

learned Rent Controller, the Respondents have made themselves guilty of contempt.

19. The Respondents are also directed to handover the physical vacant possession of the flat forthwith, failing which the learned Rent Controller as

Executing Court is directed to issue warrants of possession and cause to deliver possession to the Petitioner forthwith. The Hon"ble Supreme

Court in Noorali Babul Thanewala Vs. Sh. K.M.M. Shetty and others, has held that such direction can be issued by contempt Court when it said

to the following effect:

11. When a court accepts an undertaking given by one of the parties and passes orders based on such undertaking, the order amounts in

substance to an injunction restraining that party from acting in breach thereof. The breach of an undertaking given to the court by or on behalf of a

party to a civil proceedings is, therefore, regarded as tantamount to a breach of injunction although the remedies were not always identical. For the

purpose of enforcing an undertaking that undertaking is treated as an order so that an undertaking, if broken, would involve the same

consequences on the persons breaking that undertaking as would their disobedience to an order for an injunction. It is settled law that breach of an

injunction or breach of an undertaking given to a court by a person in a civil proceeding on the faith of which the court sanctions a particular course

of action is misconduct amounting to contempt. The remedy in such circumstances may be in the form of a direction to the contemnor to purge the

contempt or a sentence of imprisonment or fine or all of them. On the facts and circumstances of this case in the light of our finding that there was a

breach of the undertaking we think that mere imposition of imprisonment or fine will not meet the ends of justice. There will have to be an order to

purge me contempt by directing Respondent 1-contemnor to deliver vacant possession immediately and issuing necessary further and

consequential directions for enforcing the same.

20. Learned Counsel for the Respondents did not make any submission on the question of sentence. Since Gurmeet Singh-Respondent No. 1 is a

guardian of law being an employee of the Punjab Police and has failed to comply with the statement made by him before the Court, he is sentenced

to undergo simple imprisonment for a period of six months and to pay a fine of Rs. 2000/-. Since Devinder Singh-Respondent No. 2 is a near

relation of Respondent No. 1 and both have joined hands together, the said Respondent is also sentenced to undergo simple imprisonment for a

period of six months and to pay a fine of Rs. 2000/-. In default of payment of fine, the Respondents shall further undergo simple imprisonment for a

period of one month each.

21. The sentence imposed upon the Respondents shall remain suspended for a period of two weeks from today, enabling them to avail their right

of appeal, failing which the Respondents shall surrender to the Court of learned Chief Judicial Magistrate, Chandigarh for receiving their respective

sentences.

With the said directions and observations, the present contempt petition is allowed.