

**(2011) 05 P&H CK 0317**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** CR No. 640 of 2011

Damodar Dass

APPELLANT

Vs

Rajender Kumar

RESPONDENT

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**Date of Decision:** May 12, 2011

**Acts Referred:**

- Haryana Urban (Control of Rent and Eviction) Act, 1973 - Section 13, 13(3), 13(6)

**Citation:** (2011) 163 PLR 407

**Hon'ble Judges:** Rakesh Kumar Jain, J

**Bench:** Single Bench

**Final Decision:** Allowed

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### **Judgement**

Rakesh Kumar Jain, J.

This revision petition is directed against the order of learned Appellate Authority, Palwal, dated 17.9.2010, by which an appeal filed by the landlord against the order of Rent Controller, Palwal, dated 08.9.2009, has been allowed.

2. In brief, the landlord filed a petition u/s 13 of the Haryana Urban (Control of Rent & Eviction) Act 1973 (for short, "the Act") in respect of the shop (demised premises), inter-alia, on the grounds of non-payment of rent and that the demised premises having become unsafe and unfit for human habitation.

3. During the pendency of the eviction petition, a compromise was effected between the parties on 28.11.2002, as per which it was agreed that the tenant would vacate the demised premises which shall be demolished and reconstructed by the landlord in which the tenant would be re-inducted. In terms of the compromise which was taken on record as Ex. CI, the order was passed by the Rent Controller on 28.11.2002, which reads as under:

Present: Petitioner in person with Sh. P.K. Aggarwal Adv.

Respondent in person with Sh. R.A. Gupta Adv.

Parties have made their joint statement that they have arrived at compromise and compromise is Ex. Cl and per compromise, petition be dismissed. Heard. In view of the statement of the parties recorded today, petition of the petitioner is dismissed. Parties shall remain bound by the compromise Ex. Cl. File be consigned to the record room.

4. In terms of the compromise, the tenant had vacated the demised premises which was demolished and reconstructed by the landlord, but he did not abide by the terms as the tenant was not returned the possession. Hence, he (tenant) filed an application for restoration of possession u/s 13(6) of the Act which was contested by the landlord. The Rent Controller, Palwal, vide his order dated 08.9.2009 allowed the application with costs and the landlord was given time to hand over the vacant possession of the shop in dispute to the tenant within 40 days from the date of passing of the order which led to filing of a statutory appeal before the learned Appellate Authority, Palwal, which was allowed,.

5. At the outset, learned counsel for the petitioner has relied upon a decision of this Court passed in Civil Revision No. 7913 of 2010 (O and M) Chhotey Lal v. Rajender Kumar, decided on March 04, 2011 and has contended that the facts are not only exactly similar but the landlord is also the same and the impugned order passed by the Rent Controller by which the eviction petition filed by the landlord, was dismissed as withdrawn in view of the compromise between the parties. He, thus, prayed that since the case is squarely covered by the aforesaid decision dated March 04, 2011 therefore, the revision petition be allowed in terms thereof.

6. On the other hand, learned counsel for the respondent has argued that in terms of the compromise Ex. Cl, which is on record of the earlier eviction petition, the tenant was required to execute the rent deed, but he himself made a statement before the Rent Controller in the proceedings of the application filed u/s 13(6) of the Act that he would not execute the rent deed unless and until possession is delivered to him. He has also stated in the application that he will execute the rent deed simultaneously when the possession is delivered to him.

7. In reply, learned counsel for the petitioner has submitted that unless and until, the possession was offered and delivered to him, there was no question of execution of any rent deed and he was not at all at fault

8. Be that as it may, the fact remains that it is a case where this Court in Civil Revision No. 7913 of 2010 (O and M) Chhote Lal v. Rajender Kumar had framed the following question of law:

whether a tenant can seek re-entry u/s 13(6) of the Act to a building reconstructed by the landlord which was earlier got vacated from him in a petition filed u/s 13(3)(c) of the Act on the basis of a compromise in which a statement is also recorded, even if the said eviction petition was admittedly dismissed as withdrawn?

9. On this question of law after taking into account various judgments of this Court and of the Supreme Court, following finding has been recorded:

Admittedly, in the present case there is no decree u/s 13(3)(c) of the Act, rather the possession was handed over by the tenant to the landlord in terms of a compromise entered into between them which was made part of the proceedings as it was tendered by marking as Ex. CI and the statement of the parties was recorded in respect thereof. The ultimate effect was that the eviction petition was not pursued any further by the landlord and was dismissed as withdrawn. Section 13(3)(c) of the Act provides a right to the landlord to apply to the Rent Controller for seeking an order directing the tenant to put the landlord in possession if he requires it to carry out any building work at the instance of the State Government or local authority or any improvement trust under some improvement or development scheme or if it has become unsafe or unfit for human habitation. In the present case, the reason assigned for seeking eviction of the tenant from the demised premises in eviction petition No. 29 of 2002 was that it has become unsafe and unfit for human habitation and in those proceedings, the landlord took his tenant into confidence and assured him that if he surrenders possession to him, he will pull down the dilapidated shop and after reconstructing the same would let it out to him again at a particular rate of rent. On this assurance/undertaking which has not been disputed throughout by the landlord and has formed part of the judicial record by virtue of that order which was recorded by the Rent Controller on 28.11.2002 and the landlord had also suffered a statement in support of the compromise and did not proceed any further for the purpose of seeking an order of eviction from the Court, the landlord has virtually trapped the tenant. The view taken by the learned Courts below that if there was no order of eviction by the Court and the petition was only dismissed as withdrawn it would not attract the provisions of Section 13(6) of the Act, would not be tenable because for all intents and purposes insofar as the landlord is concerned, the tenant has been evicted from the demised premises, may be on the basis of a compromise which could be said to be used as a trap by the landlord. Thus, I do not subscribe to the view expressed by this Court in the case of Lachhman Dass and another (supra) which is otherwise based upon a decision of this Court in the case of Nathu Ram (supra) which was over-ruled by the Division Bench of this Court in the case of My. Parbati (supra).

10. Now reverting back to the argument of the learned counsel for the respondent that the tenant is required to execute the rent deed, it is observed that as soon as the petitioner is re-inducted as tenant by the landlord in terms of the order passed by this Court, within three months from the date of passing of this order, he will execute the rent deed. With these observations, this revision petition is allowed.