
(2014) 10 SHI CK 0085
High Court of Himachal Pradesh
Case No: CMPMO No. 14 of 2014

Ravi Rai		APPELLANT
	Vs	
J.B.S. Bawa		RESPONDENT

Date of Decision: Oct. 16, 2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) " Order 21 Rule 97, 151, 47#Himachal Pradesh Urban Rent Control Act, 1987 " Section 14

Citation: (2014) 10 SHI CK 0085

Hon'ble Judges: Rajiv Sharma, J

Bench: Single Bench

Advocate: Ajay Kumar, Sr. Advocate and Dheeraj K. Vashishta, Advocate for the Appellant;
Pankaj Chauhan, Advocate for the Respondent

Judgement

Rajiv Sharma, J.

This petition is instituted against the judgment dated 31.8.2013 rendered by the District Judge, Shimla in Civil Misc.

Appeal No. RBT No. 47-S/13 of 2011.

2. "Key facts" necessary for the adjudication of this petition are that respondent No. 1 had filed petition against respondents No. 2 and 3 under

section 14 of the Himachal Pradesh Urban Rent Control Act on the ground of arrears of rent. The eviction of respondent No. 2 was also sought

on the ground that he has built and acquired vacant possession of residential premises within the urban area of Shimla, which are sufficient for his

residence. The Rent Controller allowed the petition on 1.9.2003. Respondent No. 1 was held entitled to recover the rent from respondents No. 2

and 3 w.e.f. 1.6.1993 till 31.8.2003 @ Rs. 135/- per month with interest @ 9% per annum. Order dated 1.9.2003 has become final against the respondents on the ground of arrears of rent.

3. Warrant of possession was issued vide order dated 8.4.2005. However, the same could not be executed as the premises were found locked.

Objection petition under order 21 rule 97 read with sections 47 and 151 of the Code of Civil Procedure was filed by Rattan Lal. The same was

disposed of on merits on 11.12.2008. The objections raised by Rattan Lal were dismissed with costs quantified at Rs. 3,000/-. The warrant of

possession in respect of demised premises was again issued on 11.12.2008. The same were returned unexecuted. Thereafter, the present

petitioner filed petition under order 21 rule 97 read with section 47 and 151 of the Code of Civil Procedure before the Civil Judge (Senior

Division), Court No. 1, Shimla on the ground that he was in settled possession of the Set situated in Bawa Market. He was inducted as a tenant by

Sh. Harbans Lal. According to him, decree holder was neither owner nor landlord of the premises. He was running a tour and travel agency under

the name and style of M/s. New Ruchika Travel Agency. According to him, the order was collusive. The decree holder filed the reply. He has

denied the case of the objector that he has been inducted as a tenant by Harbans Lal and he has been in settled possession thereof. Learned Civil

Judge (Senior Division) framed issues on 29.5.2009. He dismissed the objections on 27.7.2010. Petitioner filed an appeal before the learned

District Judge, Shimla bearing Civil Appeal RBT No. 47-S/13 of 2011. Learned District Judge dismissed the same on 31.8.2013. Hence, the

present petition.

4. I have heard the learned counsel for the parties and have gone through the orders passed by the courts below.

5. OW-1 Ravi Rai has deposed that he was residing in premises for the last eight years. He was running tour and travel agency. He was paying

rent @ Rs. 10,000/- annually. According to him, Harbans Lal Sethi was owner of the premises. He has denied the suggestion that Harbans Lal

was not legally competent to receive the rent.

6. OW-2 Rattan Lal has deposed that he was residing in Set No. 2, Bawa Building, Shimla since 1990. Ravi Rai was running agency of tour and

travel for the last 7-8 years. Harbans Lal Sethi was owner of premises in which objector was tenant. Ravi Rai was paying rent to Harbans Lal

Sethi. He did not know that the ""will"" executed in favour of Harbans Lal was challenged before the Civil Court by Jung Bahadur and the same was

declared null and void by the Civil Court on 24.4.2000. He did not know that appeal filed by Harbans Lal was also dismissed.

7. According to Jung Bahadur, he was also administrator of new Bawa building Male Rose Building Bawa Estate w.e.f. 3.6.1989. He has

obtained letter of probate from District Judge, Shimla vide copy Ex. DSW-1. Harbans Lal Sethi has no concern with the building. He was legally

entitled to induct tenant and to receive the rent. He has filed civil suit against Harbans Lal Sethi qua the ""will"" executed by his mother Manorma.

Civil Suit No. 355/1 of 199/94 was decreed on 24.4.2000 in his favour. He has proved copy of decree sheet Ex. DHW/2 and copy of judgment

mark "X". The appeal was also filed by Harbans Lal Sethi, which was dismissed vide mark "Y". He has denied the suggestion that objector was

residing in premises for the last 8-10 years.

8. What emerges from the facts enumerated hereinabove is that order was passed by the Rent Controller (1), Shimla in case No. 28/20 of 2000

on 1.9.2003. Respondent No. 2 Rattan Lal has filed objections under order 21 rule 97 read with sections 47 and 151 of the Code of Civil

Procedure. These were dismissed on 11.12.2008. Respondent Nos. 2 and 3 have been resisting the execution of the order passed by the Rent

Controller. Petitioner has miserably failed to prove that he was ever inducted as a tenant by Harbans Lal.

9. Now, as far as Harbans Lal is concerned, he has relied upon ""will"" executed by the mother of respondent No. 1. Respondent No. 1 had filed a

civil suit challenging the ""will"". It was decreed on 20.4.2000. The ""will"" was declared null and void. The appeal filed against the judgment and

decree dated 20.4.2000 was also dismissed by the learned Additional District Judge, Fast Track Court, Shimla vide mark "Y" dated 27.8.2004.

Respondent No. 1 was appointed as Administrator vide order dated 30.6.1989 by the learned District Judge, Shimla on the basis of ""will"" dated

30.12.1987. Harbans Lal has been held to be tenant in the premises belonging to respondent No. 1 vide order of Rent Controller dated

16.3.2010. He was held to be in arrears of rent of Rs. 2,07,232/-. Respondent No. 1 has led tangible evidence that Harbans Lal was never owner

of the estate of Baba Market. OW-2 Rattan while deposing earlier in support of his objection on 8.4.2008 has deposed that he was in possession

of premises. However, while deposing subsequently in support of objector he has tried to show that objector was residing in the premises for the

last 7-8 years. It cannot be said that the petitioner was not aware of the proceedings pending before the Rent Controller. The entire exercise has

been undertaken by the petitioner by filing objections to delay the execution of the order passed by the Rent Controller.

10. Mr. Ajay Kumar, learned Senior Advocate, has referred to the receipt allegedly issued by Harbans Lal Sethi. Rent receipts have been

obtained pertaining to the period after the passing of order by the Rent Controller on 1.9.2003. Electricity bill does not prove that the petitioner

was in possession of suit premises.

11. Accordingly, in view of the analysis and discussion made hereinabove, there is no merit in the petition and the same is dismissed. Learned

Executing Court is directed to ensure the execution of order within a period of eight weeks from today and, if necessary, by seeking police

assistance. Pending application(s), if any, also stands disposed of. No costs.