

K.B. Sharma and anr. Vs. Vikram Loomba, District Attorney

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Court : Punjab and Haryana

Decided On : Dec-10-2002

Reported in : (2003)133PLR830

Judge : V.M. Jain, J.

Acts : East Punjab Rent Restriction Act, 1949 - Sections 13(2) and 13A

Appeal No. : Civil Revision No. 3647 of 1994

Appellant : K.B. Sharma and anr.

Respondent : Vikram Loomba, District Attorney

Advocate for Def. : M.L. Sarin and; Surveena Pannu, Advs.

Advocate for Pet/Ap. : Ashok Aggarwal and; Girish Agnihotri, Advs.

Disposition : Petition allowed

Judgement :

V.M. Jain, J.

1. This revision petition has been filed by the tenants against the order passed by the Rent Controller, ordering ejectment of the petitioner-tenants from the demised premises.

2. The facts, in brief, are that Vikram Loomba (Landlord) filed a petition dated 31.3.1992 under Section 13-A of the East Punjab Urban Rent Restriction Act, 1949 (as amended) (hereinafter referred to as the Act), against K.B. Sharma and Jagdish Sharma (tenants), for their ejectment from a portion of the residential house, detailed in the heading of the petition. It was alleged that Vikram Loomba was a 'specified landlord' and that K.B. Sharma and Jagdish Sharma were in occupation of the demised premises as tenant and there was relationship of landlord and tenants between the parties. It was alleged in the petition that the applicant, Vikram Loomba, was serving as District Attorney at Gurdaspur, under the Punjab State and was due to retire w.e.f. 30.6.1992. It was alleged that the applicant did not own and possess any other suitable accommodation in the local area of Pathankot, in which he intends to reside, for his own occupation. It was accordingly prayed that an order of ejectment be passed and immediate possession of the residential building be got delivered to the applicant.

3. In response to the notice, K.B. Sharma (tenant) filed an application, in the form of affidavit, seeking permission to contest the said petition. In the said application, it was alleged that the applicant had no locus standi to file the ejectment petition, as he was neither the owner nor the landlord of the demised premises. It was alleged that the tenants were never inducted in the premises in dispute by the applicant and the tenants had never paid any rent of the demised premises to the applicant nor they had executed any rent note in his favour and as such, there did not exist any relationship of landlord and tenant between the parties. It was further alleged that the applicant had also not disclosed in the petition as to how and when he allegedly became the owner/landlord of the premises in dispute and that the applicant had never informed the tenants about the ownership and had never demanded any rent from them. It was further alleged that the present petition was vague and indefinite as it did not mention the start of the alleged tenancy or the rate of rent. It was alleged that the applicant did not come within the definition of 'specified landlord' and that he did not require the building in dispute for his personal residence, as he did not belong to Pathankot and had no business connections here and was a permanent resident of Patti, District Amritsar, where he owns and possesses his residential accommodation. It was further alleged that the present ejectment petition had been filed with malafide intention to evict the

tenants from the premises and was an abuse of process of Court. It was alleged that the tenants had taken the premises in dispute and other accommodation on rent from Mr. Manohar Sain and that they had been paying rent to him through cheques, as per his instructions. It was alleged that the accommodation in question did not come within the purview of Section 13-A of the Act. It was further alleged that the tenant had not been properly and legally served in the petition and even the notice, sent to them, was not in the prescribed form and the petition was liable to be dismissed, on this score alone. It was further alleged that at any rate, it was a fit case where the permission to contest the petition should be granted. Similar application was also filed by Jagdish Sharma (tenant), in the form of affidavit and he had also sought permission to contest the petition.

4. Vikram Loomba (landlord) filed rejoinder by way of affidavit to the application, filed by K.B. Sharma (tenant). It was alleged that the plot measuring 12 marlas 33 sq. yards, over which the demised premises were constructed by late Smt. Sumitra Devi, mother of the applicant and wife of late Sh. Roshan Lal and by Smt. Kailashwati w/o Sh. Manohar Sain, was purchased by them from Smt. Parkash Kumari w/o Amar Chand, in the year 1967, vide registered sale-deed dated 28.4.1967. It was further alleged that the denial of title of the applicant, was not permissible under law. It was alleged that the applicant, being the successor along with his sons and others of Smt. Sumitra Devi, was a 'specified landlord'. It was alleged that there was relationship of landlord and tenant between the parties. It was alleged that Smt. Sumitra Devi, mother of the applicant, died on 16.6.1991 and before her death, she had executed a Will in his favour and in favour of his son, Manoj Loomba, and in this manner, the applicant had inherited all the rights of his mother and as such, the applicant was a 'specified landlord' and entitled to file the present petition against the tenants. It was alleged that all the three sisters of the applicant had given affidavits to the effect that they did not dispute the genuineness of the Will. It was denied that there was no relationship of landlord and tenant between the parties. It was also denied that because of the non-mentioning of rate of rent, the petition was liable to be dismissed. It was alleged that Smt. Sumitra Devi, mother of the applicant, and Manohar Sain used to receive the rent of the demised premises. It was alleged that the applicant was a 'specified landlord' and required the building for his own use. It was alleged that the applicant

had specific design to reside at Pathankot, after his retirement and it was immaterial that he belonged to Patti. It was also denied that the petition was the result of malafide and abuse of the process of Court. It was alleged that the mother of the applicant along with Manohar Sain had been receiving the rent and that the present petition was within the purview of Section 13-A of the Act. It was alleged that the tenants had no right to deny the title of the landlord and that the applicant, being a 'specified landlord', was competent to receive rent and also had right to file the petition. It was alleged that the tenants had been properly and legally served with the notices and no case was made out to grant them permission to contest the petition. Similar rejoinder was also filed by Vikram Loomba (landlord) to the application of Jagdish Sharma (tenant).

5. After hearing both the sides, the learned Rent Controller, vide order dated 13.6.1992, granted leave to the tenants to contest the petition. Thereafter, the learned Rent Controller framed the following issues:-

1. Whether the respondents are tenants of Manohar Sain, as alleged? OPR
2. Whether the applicant is co-land owner/co-landlord of the suit premises, as alleged? OPA
3. Whether the applicant is specified landlord, as alleged? OPA
4. Whether the applicant is entitled to get possession of the premises being specified landlord on account of his retirement, as alleged? OPA
5. Relief.

6. After hearing both the sides, the learned Rent Controller ordered ejectment of the tenants from the demised premises, holding that the applicant, being a co-owner, had become the landlord and was a 'specified landlord' and was entitled to get the possession of the demised premises from the tenants, being a 'specified landlord'. Aggrieved against the same, the tenants filed the present revision petition in this Court.

7. I have heard learned counsel for the parties and have gone through the record carefully.

8. It was inter alia submitted before me by learned counsel for the petitioner-tenants that the petitioner-tenants were occupying the entire building on rent, as tenants and that the landlord had filed the petition for ejectment only in respect of the portion on the first floor. It was submitted that the landlord was not entitled to split the tenancy, inasmuch as the tenants were occupying the ground floor as well as the first floor of the building in question and the landlord had filed ejectment petition only in respect of the portion of the building on the first floor. It was further submitted that in the entire petition for ejectment under Section 13-A of the Act, the landlord had nowhere alleged as to what was the rate of rent of the building in question. It was submitted that there could not be splitting of tenancy and the rent and as such no order of ejectment could be passed against the petitioner-tenants in respect of the first floor of the building in question. It was submitted that when K.B. Sharma, petitioner (tenant), appeared in the witness box as RW2 and deposed that the rate of rent was Rs. 600/- per month for the entire premises on rent, including the shops (on the ground floor). He was not cross-examined on behalf of the landlord, which would mean that this fact was admitted by the landlord. Reliance was placed on the law laid down by the Hon'ble Supreme Court, in the case reported as *Miss. S. Sanyal v. Gian Chand*, A.I.R. 1968 S.C. 438;

9. On the other hand, learned counsel for the respondent-landlord submitted before me that under Section 18-A(8) of the Act, the High Court has limited powers of revision. It was further submitted that the point now taken before me by learned counsel for the petitioner-tenant, regarding splitting up of the tenancy or that the tenancy was indivisible, was not taken either in the pleadings or during the arguments before the Rent Controller and as such, the petitioner-tenant could not be allowed to take up this point for the first time in the revision petition. It was further submitted that RW2, K.B. Sharma (tenant) had himself stated that originally the first floor of the building was let out for office-cum-residence and subsequently, the shops were constructed, which were rented out to them (tenant). It was submitted that in view of this statement, made by RW2, K.B. Sharma (tenant), it could not be said that the tenancy was indivisible or that the landlord has tried to

split the tenancy. It was submitted that infact, in the absence of the pleadings, no amount of evidence could be looked into and the tenant could not take any benefit thereof.

10. In the present case, as referred to above, Vikram Loomba (landlord) had only pleaded that he was a 'specified landlord' and that K.B. Sharma and Jagdish Sharma were in occupation of the demised premises as tenants and there existed relationship of landlord and tenant between the parties. In the heading of the ejectment petition, filed by Vikram Loomba (landlord), it was alleged that it was a petition under Section 13-A of the Act, seeking ejectment of the tenants, namely K.B. Sharma and Jagdish Sharma, 'from the residential house on the first floor, consisting of five rooms, kitchen store, bathroom, latrine and verandah'. In the applications, filed by the tenants, seeking leave to contest the petition, it was 'alleged that they had taken the premises in dispute and other accommodation from Mr. Manohar Sain on rent and they had been paying the rent to him, through cheque, as per his instructions and that the said accommodation did not come within the purview of Section 13-A of the Act. In the rejoinders, filed by Vikram Loomba (landlord) to the two applications of the tenants, seeking leave to contest the petition, it was nowhere denied that the tenants had not taken the premises in dispute and other accommodation on rent. It was only alleged that infact the mother of the applicant along with Shri Manohar Sain had been receiving rent. It was also alleged that the application was within the purview of Section 13-A of the Act. However, the fact that the tenants had taken the premises in dispute 'besides the accommodation on rent', was not specifically denied by Vikram Loomba (landlord) in the rejoinders filed by him.

11. When Vikram Loomba (landlord) appeared in the witness box as AW7, he deposed during cross-examination that the house in dispute was probably built in 1970-71 and he could not say if it was built at one and the same time or at different times. He stated that there were commercial shops, three in number, on the ground floor of the building. He stated that the respondents (tenants) were in occupation of commercial premises as tenants, besides residential premises in dispute (on the first floor). In reply to a court question as to whether the aforesaid commercial premises were part of residential premises, he replied that the

commercial premises were different from the residential premises, inasmuch as the residential premises were on the first floor, whereas the commercial premises were on the ground floor. He, however, admitted that 'the tenancy is the same'. When K.B Sharma (tenant) appeared in the witness box as RW, he deposed that he, along with Jagdish Sharma (the other tenant), was in occupation of three shops on the ground floor and one terrace, five rooms, kitchen and bathroom on the first floor of the said shops and the other shops and those other shops had been let out to other persons. He stated that they had taken the shops and residential accommodation on the first floor on rent from Mr. Manohar Sain. He stated that originally, the first floor was let out for office-cum-residence purposes and subsequently, the shops were constructed and were rented out to them by Mr. Manohar Sain. He stated that they were paying Rs. 600/- per month as rent for the entire premises, including the shops. He stated that originally, they used to get the repairs done and used to deduct the cost of repairs from the rent, but now it was not being done, even though even now they were getting the repairs done themselves. During cross-examination, he stated that no rent note was written at the time of taking the premises on rent.

12. From a perusal of the pleadings and the evidence, led by the parties, it is clear that Vikram Loomba (landlord), in the petition, had not specifically stated as to whether the tenants were in occupation of only the first floor, meant for residential premises or were also in occupation of the shops on the ground floor. The landlord had also not stated as to what was the rate of rent for the residential as well as commercial premises, in occupation of the tenants. In the petition, it was only alleged that he was filing the petition under Section 13-A of the Act for ejectment of the tenants from the residential house on the first floor, detailed in the heading of the petition. In the applications, filed by the tenants, seeking leave to contest the petition, it was specifically alleged by them that they had taken the premises in dispute (residential accommodation) and other accommodation on rent from Mr. Manohar Sain. This fact was not denied by the landlord when he filed the rejoinders to the applications, filed by the tenants. Furthermore, as referred to above, during evidence, it was specifically admitted by AW7, Vikram Loomba (landlord) that the tenants K.B. Sharma and Jagdish Sharma, were in occupation of commercial premises as tenants, besides residential premises in dispute and

that 'the tenancy is the same', In this view of the matter, in my opinion, it stands fully proved on the record that the tenancy for the three commercial shops on the ground floor and the residential portion on the first floor was joint and indivisible. Merely because RW2, K.B. Sharma (tenant) had stated that originally they were let out the first floor for office-cum-residence purposes and later on, when the shops were constructed, these were also let out to them, in my opinion, would be of no consequence and it could not be said that there are two separate tenancies, one for the commercial shops on the ground floor and the other for the residential portion on the first floor. This is especially so, when RW2, K.B. Sharma (tenant) stated that they were paying Rs. 600/- per month as rent for the entire premises on rent, including the shops. No question was put to him, during cross-examination on behalf of the landlord, in this regard and this part of the statement of RW2 had gone unrebutted. This would mean that the landlord had accepted the allegations made by RW2, K.B. Sharma, that the rent was Rs. 600/- per month for the entire premises on rent with them i.e. the shops on the ground floor and the residential portion on the first floor. The statement, made by RW2, K.B. Sharma, is in consonance with the statement of AW7, Vikram Loomba (landlord), when he specifically stated that the tenants were in occupation of the commercial premises, besides residential premises in dispute and that the tenancy is the same.

13. In A.I.R. 1968 S.C. 438 (supra), it was held by the Hon'ble Supreme Court, as under:-

'The contract of tenancy is a single and indivisible contract, and in the absence of any statutory provision to that effect, it is not open to the Court to divide it into two contracts-one of letting for residential purposes and the other for non-residential purposes and to grant relief to the landlord under Section 13(1)(e) of the Act, limited to the portion of the demised property which is being used for residential purposes.'

14. In view of the law laid down by the Hon'ble Supreme Court, referred to above, it would be clear that the contract of tenancy is a single and indivisible contract and it is not open to the Courts to divide it into two contracts, one for residential purposes and the other for non-residential purposes and/or to order the eviction of

the tenant from the portion, which was being used for residential purposes. In the present case, as referred to above, admittedly there was a single tenancy in respect of the shops on the ground floor and the residential portion on the first floor and the rate of rent was Rs. 600/- per month for the entire tenancy i.e. the shops on the ground floor and the residential portion on the first floor. That being the position, the landlord would not be entitled to seek the ejectment of the tenant from a part of the tenancy i.e. from the residential portion on the first floor by splitting the tenancy, considering that it was a single tenancy in respect of both the portions. In the present case, as referred to above, the landlord had sought the ejectment of the tenants only from the residential portion of the demised premises, even though the tenants were in occupation of the shops on the ground floor and the residential portion on the first floor in the form of a joint tenancy. That being so, in my opinion, the order of ejectment only in respect of the residential portion of the single tenancy, comprising of the shops on the ground floor and the residential portion on the first floor, cannot be passed in favour of the landlord, in the petition under Section 13-A of the Act. If the ejectment order, in respect of the residential portion of the first floor, is passed against the tenants, this would amount to splitting the tenancy, by dividing it into two contracts, one for residential purposes and the other for commercial purposes. This is not permissible, in view of the law laid down by the Hon'ble Supreme Court, in Miss S. Sanyal's case (supra).

15. So far as the submission of the learned counsel for the respondent-landlord that this point could not be allowed to be taken by the tenants for the first time in the revision petition is concerned, in my opinion, this matter goes to the very jurisdiction of the Controller to order the ejectment of the tenants from a portion of the tenancy, even though admittedly it was a joint tenancy in respect of the shops on the ground floor and the residential portion on the first floor. The petition under Section 13-A of the Act, seeking ejectment of the tenants from a portion of the demised premises (considering that it was a single tenancy) would not be maintainable and as such the ejectment order, passed by the Rent Controller, in respect of the residential portion of under Section 13-A of the Act, cannot be upheld and is liable to be set aside. Furthermore, in the present case, as referred to above, the tenants had specifically pleaded in their applications, seeking leave to contest the petition, that they had taken the tenanted premises in dispute and

other accommodation on rent from Mr. Manohar Sain and were paying rent to him. Thus, it would be clear that from the very beginning, the case of the tenants was that they were tenants not only in the premises in, dispute (residential portion on the first floor) but also the other accommodation (shops on the ground floor). Furthermore, as referred to above, this fact was not contested by the landlord while filing the rejoinders. Even otherwise, during evidence, it was specifically admitted by the landlord that there was a single tenancy in respect of the shops on the ground floor and the residential portion on the first floor and that being so, the landlord-respondent cannot now be allowed to urge that this point had been taken by the tenant for the first time in the present revision petition. Merely because no specific issue was framed regarding maintainability of the petition, in this regard, in my opinion, would be no ground to uphold the order of ejectment, passed against the petitioner-tenants, especially when, under law, it is not permissible to order ejectment of the tenants from a portion of the tenanted premises, when the tenancy is one, as in this case.

16. Furthermore, considering that the Rent Controller had no jurisdiction to order ejectment of the tenants from a portion of the demised premises (considering that it was a single tenancy), in my opinion, no restriction could be imposed on the revisional powers of this Court under Section 18-A(8) of the Act, to interfere in the order passed by the Rent Controller, if the order of the Rent Controller is contrary to the law laid down by the Hon'ble Supreme Court, in S. Sanyal's case (*supra*).

17. During the course of arguments, it was also submitted before me by learned counsel for the respondent-landlord that during the pendency of the petition, an application dated 20.5.1997 was filed in this Court, for taking into consideration the subsequent events. It was submitted that certain new facts were required to be brought on the record and as such, the said application was filed along with the affidavit, for bringing on record those facts. It was submitted that as per the said application, revision petitioner No. 1 namely K.B. Sharma, even prior to the institution of the ejectment petition, had shifted his entire business to Jammu and was not residing in the premises in dispute and that now petitioner No. 2, namely Jagdtsh Sharma, had also shifted his residence to Jammu, as he has been transferred from Pathankot to Jammu and that the premises in dispute are lying

locked and there is no one residing in the said premises. It was submitted that in the said application, it was prayed that the revision petition may be dismissed, in view of the subsequent events. On the other hand, learned counsel for the petitioners submitted before me that reply dated 30.9.1997 was filed in this Court, on behalf of the petitioners, to the aforesaid application for the respondent, for taking into consideration the subsequent events. It was submitted that in the said reply, it was stated that petitioner No. 1, K.B. Sharma, who was a senior partner of the firm, was still continuing at the same premises and, therefore, it was wrong to allege that the entire business had been shifted to Jammu. It was further alleged in the said reply that even though petitioner No. 2, Jagdish Sharma, who was temporarily residing on the first floor in some portion, had been transferred, yet for use and occupation of the firm, the premises were being used partly for office and partly for residence. It was submitted that in view of the said reply, filed by the petitioners, no case was made out for dismissing the revision petition, in view of the alleged subsequent events, mentioned by the respondent-landlord, in his application.

18. After hearing learned counsel for the parties and perusing the record, in my opinion, no case is made out for dismissing the revision petition, on account of the alleged subsequent events, mentioned by the respondent-landlord in his application, especially when the petitioner-tenants have given a detailed reply, with regard to the alleged subsequent events and have denied that the petitioners have shifted their business to Jammu. On the other hand, it has specifically been alleged that the premises in question was being used partly for office and partly for residence. In fact, from the very beginning, the case of the petitioner-tenants was that they had taken the first floor of the building for office-cum-residential purposes. This would be clear from the statement, made by RW2, K.B. Sharma (tenant), before the Rent Controller when he stated that originally the first floor was let out for office-cum-residence purposes and subsequently, the shops were constructed and were rented out to them and that they were paying Rs. 600/- per month as rent for the entire premises, including the shops. Thus, in my opinion, on account of the alleged subsequent events no case is made out for dismissing the revision petition, filed by the petitioner-tenants.

19. In view of my detailed discussion above, in my opinion, the ejectment petition, filed by the respondent-landlord, under Section 13-A of the Act, seeking ejectment of the petitioner-tenants from the residential portion of the demised premises, would not be maintainable and the order of ejectment, passed by the Rent Controller, ordering ejectment of the petitioner-tenants from the residential portion on the first floor, is liable to be set aside.

20. For the reasons recorded above, the present revision petition is allowed, the order dated 10.8.1994, passed by the Rent Controller, is set aside and the ejectment petition, filed by the landlord under Section 13-A of the Act, is dismissed, with no order as to costs.

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