

Madan Lal Vs. Kunta Devi Etc.

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Court : Himachal Pradesh

Decided On : Nov-30-2005

Reported in : 2006(1)ShimLC186

Judge : V.M. Jain, J.

Acts : Himachal Pradesh Urban Rent Control Act, 1987 - Sections 14 and 24(5);
;Code of Civil Procedure (CPC) - Section 47

Appeal No. : C.R. No. 154 of 2005

Appellant : Madan Lal

Respondent : Kunta Devi Etc.

Advocate for Def. : Anuj Gupta, Adv.

Advocate for Pet/Ap. : K.D. Batish, Adv.

Disposition : Revision dismissed

Judgement :

V.M. Jain, J.

1. This revision petition under Section 24(5) of the H.P. Urban Rent Control Act, 1987 (hereinafter to be referred as the Act), has been filed by the petitioner-tenant against the order dated 10.11.2005 passed by the Rent Controller (Executing

Court) dismissing the objection petition filed by the tenant-J.D. under Section 47 C.P.C.

2. The facts which are relevant for the decision of the present petition are that Jai Karan, landlord had filed the eviction petition under Section 14 of the Act against Madan Lal , tenant, in respect of the demised premises, on account of the non-payment of arrears of rent. After hearing both sides and perusing the record, the learned Rent Controller, Shimla, vide order dated 15.1.1999, allowed the eviction petition filed by the landlord and ordered the ejectment of the tenant from the demised premises, with the stipulation that in case the tenant makes the payment, as mentioned below, within one month from the said date, he shall not be evicted from the premises in question: '

1. At the rate of Rs. 80.80 per month w.e.f. 3.5.1988 to 2.5.1993.

2. At the rate of Rs. 88.88 w.e.f. 3.5.1993 to 2.5.1998.

3. At the rate of 97.76 w.e.f. 3.5.1998 till today.

4. Simple interest at the rate of Rs.9% on above rent.

The said order dated 15.1.1999 passed by the Rent Controller was upheld in appeal by the learned appellate authority vide order dated 6.11.2000, vide which the appeal filed by Madan Lal, tenant was dismissed.

3. Alleging that the tenant had failed to pay the arrears of rent and interest as directed by the Rent Controller in his order dated 15.1.1999, Jai Karan, landlord, filed execution petition before the Executing Court (Rent Controller). The said execution petition was contested by Madan Lal, tenant, by filing objection petition under Section 47 C.P.C. alleging therein that he had deposited the arrears of rent etc. and the landlord had failed to point out that there was any short tender. The Decree Holder filed reply to the objection petition alleging therein that the amount deposited by the tenant was short and did not comply with the order dated 15.1.1999 passed by the Rent Controller.

4. After hearing both sides and perusing the record, the learned Rent Controller (Executing Court) dismissed the objection petition filed by the tenant, vide order dated 10.11.2005. Aggrieved against the same, Madan Lal, tenant, filed the present revision petition in this Court.

5. Caveat was filed on behalf of the legal representatives of Jai Karan, landlord and the learned Counsel had put in appearance on behalf of the caveators.

6. I have heard the learned Counsel for the parties in the present revision petition and have gone through the record carefully.

7. It is not disputed before me that after the dismissal of the objection petition by the learned Rent Controller (Executing Court) on 10.11.2005, warrant of possession was issued in favour of the landlords and against the tenant and that in pursuance thereof, the landlords have already taken possession over the property in question and the tenant/petitioner has since been ejected from the demised premises, in execution of the eviction orders passed against him.

8. The learned Counsel appearing for the petitioner - tenant submitted before me that there was no short tender and that the order dated 15.1.1999 passed by the Rent Controller had since been complied with by the tenant. He has further submitted that it was the duty of the Rent Controller to have assessed the arrears of rent and interest and the Rent Controller having failed to do so, the petitioner - tenant cannot be blamed for the same. It has further been submitted that the petitioner - tenant was not liable to pay interest on the arrears of rent. Reliance was placed on the law laid down by a Division Bench of this Court in the case Om Parkash v. Sarla Kumari and Ors. 1991 (1) Sim.L.C. 45. Reliance was also placed on the law laid down by the Hon'ble Supreme Court in the case Madan Mohan and Anr. v. Krishan Kumar Sood : (1994)ILLJ943SC .

9. On the other hand, the learned Counsel appearing for the respondents landlords (caveators) submitted before me that the judgment passed by the Division Bench of this Court in Om Parkash case (supra) has since been over ruled by a Full Bench of this Court in the case Wazir Chand v. Ambaka Rani and Anr. Civil Revision No. 322 of 2003, decided on 11.8.2005.

10. After hearing the learned Counsel for the parties and perusing the record, in my opinion, there is no merit in this revision petition and the same is liable to be dismissed. As referred to above, while ordering the ejectment of the tenant petitioner from the demised premises, the learned Rent Controller in his order dated 15.1.1999 had made it clear that the tenant shall not be evicted from the premises if he makes the payment detailed therein within one month from the date of the said order. As per the said order, the tenant was required to pay rent at different rates detailed therein for the period from 3.5.1988 till the date of the order dated 15.1.1999 and besides that the tenant was also required to pay simple interest at the rate of 9% on the said rent. It is not disputed before me that the entire amount including rent and interest, if calculated as per the order dated 15.1.1999 passed by the Rent Controller had not been deposited by the petitioner-tenant within the stipulated period and the amount deposited was short. The plea taken by the learned Counsel appearing for the petitioner - tenant that the tenant was not required to deposit the interest while depositing the arrears of rent, in my opinion, cannot be accepted, in view of the specific order dated 15.1.1999 passed by the learned Rent Controller vide which the order of eviction was passed against the tenant with the stipulation that in case the tenant deposits the arrears of rent alongwith interest, as detailed in the said order, the tenant shall not be evicted from the demised premises. Since there was specific direction by the Rent Controller to the tenant to deposit the arrears of rent alongwith interest, in my opinion, it was the duty of the tenant to have deposited the arrears of rent alongwith interest within the stipulated period, failing which, the tenant - petitioner was liable to be evicted from the demised premises in execution of the order dated 15.1.1999 passed by the learned Rent Controller, considering that it was a conditional order and the tenant had failed to comply with the same.

11. So far as the authority 1991 (1) Sim. L.C. 45 (supra), relied upon by the learned Counsel appearing for the petitioner - tenant, is concerned, in my opinion, the same would be of no help to the petitioner, since the same was specifically over ruled by a Full Bench of this Court in Wazir Chand's case (supra), holding that the expression 'amount due' includes the arrears of rent upto the date of the passing of the final eviction order, as also the interest upon such arrears of rent at the rate of 9% per annum and the costs of the application as would be assessed

by the Rent Controller and further holding that the law laid down by a Division Bench of this Court in Om Parkash's case (supra) did not lay down correct law and was specifically overruled by the Full Bench.

12. So far as the authority : (1994)ILLJ943SC , relied upon by the learned Counsel appearing for the petitioner-tenant, is concerned, in my opinion, the same would be of no help to the petitioner - tenant, considering that the present revision petition has arisen not against the order passed by the Rent Controller ordering the ejectment of the tenant from the demised premises and/or the order passed by the appellate authority to this effect. In fact, the ejectment order against the tenant had become final between the parties. On the other hand, the revision petition has been filed by the petitioner - tenant against the order passed by the executing Court dismissing the objection petition filed by the tenant. In the present case, as referred to above, the ejectment order had become final. So far as the Executing Court is concerned, it is well settled that the Executing Court cannot go behind the decree or order sought to be executed. In this view of the matter, in case the tenant was aggrieved against the order passed by the Rent Controller and/or the appellate authority, the tenant ought to have challenged the same. However, the order of eviction passed by the Rent Controller having become final between the parties, the petitioner - tenant cannot be allowed to urge, in the execution petition, that there was any defect in the ejectment order passed by the Rent Controller. Even otherwise, while passing the order dated 15.1.1999, the Rent Controller had specified the amount of arrears of rent to be paid by the tenant at different rates specified therein for the period from 3.5.1988 till the date of the order i.e. 15.1.1999 alongwith simple interest at the rate of 9% on the said amount of rent. Under these circumstances, it cannot be said that the Rent Controller had failed to specify the arrears of rent and interest thereon. Be that as it may, as referred to above, the order dated 15.1.1999 passed by the Rent Controller is not under challenge before this Court. On the other hand, it is the order of the Executing Court which is under challenge in the present revision petition. In my opinion, the learned Executing Court had rightly dismissed the objection petition filed by the tenant holding that there was shortfall in the deposit of arrears of rent and interest and that being so, no fault could be found with the order dated 10.11.2005 passed by the Executing Court (Rent Controller) while dismissing the objection petition of

the tenant.

13. In view of the above, finding no merit in this revision petition, the same is hereby dismissed.

CMP No. 199 of 2005:

14. In view of the orders passed in the main petition, this application has become infructuous.

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