

Sadhna Vs. Baldev Krishan and Another

Sadhna Vs. Baldev Krishan and Another

SooperKanoon Citation : sooperkanoon.com/950873

Court : Punjab and Haryana

Decided On : Oct-31-2011

Judge : Rakesh Kumar Garg

Appeal No. : Civil Revision No.6161 of 2011 (O&M).

Appellant : Sadhna

Respondent : Baldev Krishan and Another

Judgement :

Rakesh Kumar Garg, J.

By way of instant revision petition, the petitioner has challenged the order of eviction dated 5.4.2001 of Rent Controller, Panchkula and judgment dated 3.8.2011 of the Appellate Authority, Panchkula, dismissing the appeal against the aforesaid order of eviction.

2. The respondent-landlords filed ejectment petition against the petitioner- tenant alleging that the present petitioner was tenant in the demised premises @ Rs. 6,000/- per month besides electricity and water charges. She has not paid the rent w.e.f. 1.4.2002 to 31.12.2006 and that the premises in question were bonafidely required by the respondent/landlords for their personal use and occupation.

3. The grounds of eviction as set up by the respondent/landlords reads thus :-

"(i) the respondent has not paid the rent w.e.f. 1.4.2002 to 31.12.2006 @ Rs. 6000/- per month, total amounting to Rs. 3,42,200/-, but the petitioner only claim rent for the period of three years amounting to Rs. 2,16,000/- along with interest and costs. The respondent is further liable to pay the house tax of the premises in question under his tenancy.

(ii) That the premises in question are bonafidely required by the petitioners for their personal use and occupation. The petitioner have one son two daughter, all are married, are having their children. The accommodation with the petitioners at the ground floor is insufficient for the family. The relative of the petitioners used to come their house occasionally and the petitioners have no proper accommodation for the relative and families.

(iii) That the respondent is a person of bad temperaments and has created a nuisance with the petitioners."

4. Upon notice, the petitioner-tenant appeared and filed written statement raising various objections and further submitting that the petitioner was not tenant of the respondent-landlords and she never entered into any agreement of tenancy. It was further submitted that her husband was a tenant of the demised premises and she was not aware about the terms and conditions settled with the owners of the property by him and as per her knowledge, her husband was paying rent @ Rs. 1800/- per month which included the water charges etc. It was also claimed that her husband has paid the electricity charges. It was further stated that the petitioner was residing in the demised premises along with her husband and the grounds taken for ejectment were false and fabricated and the petition was liable to be dismissed.

5. On the basis of pleadings, following issues were framed by the Rent Controller :-

"1. Whether the respondent has failed to pay the rent as claimed by the petitioners and, therefore, the respondent is liable to be evicted from the demised premises?

OPP

2. Whether the petitioners required the demised premises for their and their family's personal use, need and occupation? OPR
3. Whether the petition is not maintainable in the present form? OPR
4. Whether no cause of action has accrued in favour of the petitioners for filing the present petition? OPR
5. Whether the petitioners are guilty of concealing true and material facts from the court? If so, to what effect? OPR
6. Whether this court has no jurisdiction to entertain and try the present petition? OPR
7. Relief."

6. Both the parties adduced evidence in support of their respective claims. After considering the evidence adduced by the parties and hearing learned counsel for the parties, the Rent Controller decided all the issues in favour of the respondent-landlords and resultantly, directed the petitioner-tenant to hand over the vacant possession of the premises in question to the respondent-landlords. It may also be relevant to mention here that vide order dated 30.5.2007, the Rent Controller assessed the provisional rent @ Rs. 6,000/- per month. However, the petitioner tendered the rent @ Rs. 1800/- per month on 12.10.2007. At the time of passing the order of eviction on 5.4.2001, the Rent Controller found that tender of rent by the petitioner @ Rs. 1800/- per month was short and in view of judgment of this Court in **Rajan @ Raj Kumar v. Rakesh Kumar 2010(1) RCR(Rent) 386** wherein it has been held that if the tenant does not comply with the order of provisional assessment of rent the eviction order has to follow, and that the petitioner was liable to be evicted on the ground of non-payment of rent.

7. Appeal filed by the petitioner against the aforesaid order of eviction was also dismissed by the Appellate Authority vide impugned judgment dated 3.8.2011. It is also useful to refer to observations of the Appellate Authority which read as follows :-

"13. As is clear from the pleadings of the parties the"respondents- landlords had sought the ejectment of"the appellant-tenant from the demised premises on"the ground of non-payment of rent amounting to"Rs. 2,16,000/- at the rate of Rs. 6,000/- per month from"01.04.2002 to 31.12.2006 alongwith interest and costs"as well as on account of personal need and"occupation. As against this, the stand taken by the"appellant-tenant is that she never entered into"agreement of tenancy with the respondents-landlords,"but her husband took the demised premises on rent at"the rate of Rs. 1,800/- per month and paid the rent" upto January, 2008, which included water charges. In"para No. 14 of the impugned judgement/order the"learned Rent Controller has rightly observed that the"contentions of the learned counsel for the appellant- tenant"that there is no relationship of landlord and"tenant between the parties, is misconceived as the"appellant-tenant when appeared as RW1 had"admitted the factum of tenancy, that she is living with"her husband and that the relationship between"husband and wife are cordial.

14. The appellant-tenant though had expressed her"ignorance about the terms and conditions of tenancy,"but, according to her, the rate of rent fixed was" Rs. 1,800/- per month. In order to prove the rate of"rent to be Rs. 6,000/- PM the respondents-landlords"besides examining PW2 Ajay Aggarwal (son of the "respondents-landlords) also examined PW3 J.P."Singh, who, has categorically deposed that the rate of"rent of such like premises as that of demised"premises in the year 2000 was Rs. 4500/- per month"and in the present case the respondents-landlords"rented out the premises in question to the appellant-tenant"at the rate of Rs. 6,000/- per month in the year"2002. Learned Rent Controller rightly held the"assessment made vide order dated 30.05.2007 qua"the rate of rent of the premises in question to be legal"by observing that the appellant-tenant did not adduce any evidence in rebuttal to the evidence adduced by the respondents-landlords to prove that the rate of rent of the demised premises was Rs. 1,800/- per month. Also, the learned Rent Controller has rightly relied upon the authorities "**Rajan @ Raj Kumar v. Rakesh Kumar**" **2010(1) RCR(Rent) 386**, relied upon by the learned counsel for the respondents-landlords and thus, rightly held that the tender of rent made by the appellant-tenant on 12.10.2007 was short and on account of the failure of the appellant-tenant to pay the same, she is liable to be ejected on the ground of non-payment of assessed rent.

15. In order to prove the second ground of bonafide need and personal necessity the respondent-landlord- Baldev Krishan has appeared as PW1 and also examined his son Ajay Aggarwal as PW2. As mentioned earlier, learned counsel for the appellant-tenant laid much emphasis regarding failure of the respondents-landlords to disclose the fact that the premises in question is a triple storey building instead of double storey, as pleaded and deposed by them. As against this, the observation made by the learned Rent Controller in para No. 17 of the impugned judgement that non-mentioning of the fact that the premises in question is a triple storey building does not affect the merits of the case as the respondents-landlords have duly explained this fact by stating that they could not state this fact inadvertently, are correct because in the authorities "**Mukesh Kumar v. Rishi Prakash**" (supra) Hon'ble Delhi High Court and "**Amir Chand v. G.R. Dhir**" (supra), Hon'ble Punjab and Haryana High Court relied upon by the learned counsel for the respondents-landlords, it has been held that mere failure to plead even the necessary ingredients in an eviction petition is not fatal to its maintainability. Hon'ble Delhi High Court while making the aforesaid observations has referred to the authority of the Hon'ble Apex Court in "**Madan Gopal v. Mam Raj**" AIR 1976 SC 461. Hence, the authority "**Shri Banke Ram v. Smt. Sarasti Devi**" (supra), relied upon by the learned counsel for the appellant-plaintiff is of no help. Also, the authority "**Joginder Singh Sawhney v. Harbans Lal**" (supra), relied upon by the learned counsel for the appellant-tenant is distinguishable from the facts of this case where the stand taken by the tenant was that the landlord has the residential house in Model Town, Ambala City, in his own name, which was rented to some other tenant but this fact has intentionally been concealed by the landlord. Learned Rent Controller accepted the aforesaid plea of the tenant and held that the landlord had already got vacated a portion in the demised premises about 2= years ago. However, there are no such circumstances in the present case.

16. As mentioned earlier, learned counsel for the appellant-tenant has pointed out that the learned Rent Controller while passing the impugned judgement/order has failed to decide the objections taken by him qua the exhibition of documents Ex.PW1/A to Ex.PW1/H. Ex.PW1/A is the site plan and Ex.PW1/B is the re-allotment letter of plot No. 562, Sector 10, Panchkula, in favour of the

respondents-landlords, whereas both Ex.PW1/C and Ex.PW1/D are same document, the former being photocopy and the latter being the original. Ex.PW1/E is the sanction order of transfer of plot in question in favour of the respondents-landlords. Ex.PW1/F to Ex.PW1/H are the X-Ray, check-up and CT scan reports of the respondent No. 1-landlord-Baldev Krishan. From the written statement furnished by the appellant-tenant it is clear that the fact that respondents-landlords- Baldev Krishan and Smt. Sheela Devi are the owners of demised premises, has not been disputed. The documents Ex.PW1/B to Ex.PW1/E relied upon by the respondents-landlords have been placed on record to prove their title/ownership over the demised premises, which have been duly attested by the Notary and these documents were rightly exhibited and can be read into evidence. The respondents-landlords did not examine the drafts-man who prepared the site plan Ex.PW1/A and it was rightly objected to by the learned counsel for the appellant-tenant being not admissible into evidence. However, since the fact that the appellant-tenant alongwith her husband-Ajay Kumar took the demised premises on rent from the respondents-landlords, is not disputed, the failure of the respondents-landlords to duly prove the site plan Ex.PW1/A in no way adversely affects the face of the respondents-landlords on merits. The documents Ex.PW1/F to Ex.PW1/H, is the medical record of respondent No. 1-landlord-Baldev Krishan and as it had been duly attested by Notary, the same was rightly allowed to be exhibited by the learned Rent Controller. Hence, the authority "**Darshan Kaur v. The Amritsar Primary Cooperative Agricultural Development Bank Limited, Amritsar**" (supra), relied upon by the learned counsel for the appellant-tenant is of no help.

16. Learned Rent Controller in para No. 16 of the impugned judgement while scrutinizing the evidence adduced by the respondents-landlords qua their bona fide need and occupation and use of the premises in question for personal necessity, took into consideration the fact that PW2 Ajay Aggarwal, son of the respondents-landlords was married after the tenancy in question started in the year 2002 and he is having two children, besides the fact that two married daughters of the respondents-landlords also have children, for whom the respondents-landlords also require accommodation in the premises in question. Also, the learned Rent Controller took into consideration the old age of the

respondent-landlord No. 1. The appellant-plaintiff and her husband-Ajay Kumar when appeared into the witness box as RW1 and RW2 respectively, during their cross-examination have admitted that two daughters and one son of the respondents-landlords are married and all of them have children. They also have admitted that the son of the respondents-landlords alongwith his family reside with them in H.No. 562, Sector 10, Panchkula. As against this, no evidence in rebuttal on behalf of the appellant-tenant is on record that the personal necessity and bonafide need of the premises in question by the respondents-landlords is not genuine. In the authorities "**Pawan Kumar Mittal v. Girdhari Lal Saroya**" (supra) and "**Sarla Ahuja v. United India Insurance Company Limited**" (supra), the landlord is the best judge of his need and the need is to be seen from the point of view of the landlord and not the tenant and that the tenant cannot impose his will on the landlord regarding choice of suitability of premises. As such, I concur with the findings recorded by the learned Rent Controller that the respondents-landlords have duly proved their bonafide requirement of the premises in question and as such, the respondent is liable to be evicted from the premises in question. Hence, in my considered opinion, the learned Rent Controller rightly decided both the issue No. 1 and 2 in favour of the respondents-landlords. Further, in view of the findings recorded on issues No. 1 and 2, learned Rent Controller rightly answered issues No. 3 to 6 in favour of the respondents-landlords."

8. Still not satisfied, the petitioner has filed the instant revision petition. This Court on October 5, 2011 passed the following order :-

"Admittedly, petitioner is in arrears of rent. Let the arrears of rent be deposited before the Registrar of this High Court within two weeks from today.

List on 31.10.2011."

9. Today, Shri N.C. Kinra, Advocate appearing on behalf of the petitioner has outrightly stated that the petitioner does not want to deposit the arrears of rent before this Court as per order dated October 5, 2011, as the petitioner has denied the relationship of landlord and tenant between the parties.

10. The petitioner has failed to comply with the order dated 5.10.2011 of this Court. The conduct of the petitioner demonstrates lack of bona fide on her part. It is useful to refer to a judgment of this Court in the case of **Gurjit Singh Gill v. Major Paramjit Singh Gothra 2004(3) RCR (Civil) 101**, wherein it has been held that the defendant is under an obligation to pay the arrears of rent and current rent during pendency of proceedings, failing which, its consequences must follow i.e. striking off its defence. No doubt, the aforesaid observations were made by this Court while interpreting the provisions of Order 15 Rule 5 CPC in a Civil Suit whereby plaintiff had sought possession of the demised premises by way of ejectment of the defendant from the suit property. Though it is well settled that the provisions of the CPC are not applicable to the proceedings under the Rent Act strictly, yet the aforesaid principles can be applied in proceedings under the Rent Act by the Courts. It may also be mentioned that the said power of striking off the defence is to be exercised with due regard to the facts and circumstances of the each case. In the instant case, the conduct of the petitioner is writ large, as the petitioner has failed to comply with the interim order of this Court to deposit the arrears of rent with the Court. Thus, the petitioner is not entitled to claim any relief from this Court.

11. Even otherwise, both the authorities below on appreciation of evidence have recorded concurrent finding that there exists a relationship of landlord and tenant between the parties and tender of rent made by the petitioner was short and that the respondent-landlords required the demised premises for their bone fide need. Counsel for the petitioner was unable to point out any material evidence on the record of the case on the basis of which the findings as recorded by the authorities below could be challenged.

12. In this view of the matter, I find no merit in this petition.

13. Dismissed.

Petition dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com