

(2023) 03 SHI CK 0030
In the High Court Of Himachal Pradesh
Case No : CMPMO No. 269 Of 2022

Asha Devi

APPELLANT

Vs

Reena Bhardwaj

RESPONDENT

Date of Decision : 10-03-2023

Acts Referred:

Constitution Of India, 1950 — Article 227
Code Of Civil Procedure, 1908 — Section 47, 151
Himachal Pradesh Urban Rent Control Act, 1987 — Section 14(2), 14(2)(i)

Citation : (2023) 03 SHI CK 0030

Hon'ble Judges : Vivek Singh Thakur, J

Bench : Single Bench

Advocate : Rajinder Singh Chandel, Amit, Vaid, Lakshay Parihar

Final Decision : Dismissed

Judgement

Vivek Singh Thakur, J

1. Petitioner, invoking jurisdiction of this Court under Article 227 of Constitution of India, has approached this Court for setting aside the orders dated 28.6.2022 and 15.1.2021 passed by Rent Controller, Court No.2, Shimla in Execution Petition No. 15 of 2020, titled as Reena Bhardwaj vs. Asha Joshi.

2 Petitioner is tenant, whereas respondent is landlord. For convenience, they are being referred as tenant and landlord respectively in this order.

3 It is an admitted case that eviction petition preferred under H.P. Urban Rent Control Act, 1987 (hereinafter referred as the Act) by landlord has been allowed on the grounds of arrears of rent as well as bonafide requirement of landlord. Tenant has been held in arrears of rent amounting to Rs.9,08,119/-and in case of deposit of said amount within 30 days from the date of eviction order, along with cost, eviction of tenant will not be available to landlord. Eviction petition was allowed on 19.3.2020.

4 Tenant had preferred an appeal against aforesaid eviction order dated

19.3.2020, which is stated to have been dismissed in default. However, it is the claim of tenant that application for restoration thereof has been filed by tenant and same is pending adjudication before the Appellate Authority.

5 It is also an admitted fact that tenant has failed to deposit arrears of rent within 30 days as provided under Section 14(2) of the Act. Till date, tenant has not deposited any amount against arrears of rent determined by the Rent Controller in eviction petition preferred by landlord which has been allowed on 19.3.2020.

6 In aforesaid facts and circumstances, landlord preferred an Execution Petition No. 15 of 2020 for eviction of petitioner from premises in reference for non-deposit of arrears of rent within 30 days of passing the eviction order.

7 During pendency of Execution Petition, an application was preferred by tenant under Section 151 CPC with prayer seeking leave to produce the copy of jamabandi of some land alongwith one year average value of same calculated by concerned Revenue Authority, with further prayer to attach the said landed property of tenant in lieu of arrears of rent determined by Rent Controller. The said application was considered by Rent Controller and it was dismissed by passing a speaking order dated 15.1.2021 wherein it was observed by Rent Controller that Rent Controller was not having jurisdiction to recover the arrears of rent by attachment of landed property of tenant.

8 However, in its order dated 15.1.2021 it was further observed by Rent Controller that in view of order passed by Supreme Court in Suo Motu Writ Petition No. 3 of 2020, time to make valid tender of rent to landlord by tenant in furtherance to eviction order dated 19.3.2020 stood extended w.e.f. 15.3.2020 till further orders and at the time of passing of order dated 15.1.2021 the said order of the Supreme Court was in force. Therefore, warrant of possession was not issued by Rent Controller and matter was adjourned for reply to objections and consideration thereon.

9 Tenant had also filed Objections under Section 47 read with Section 151 of Code of Civil Procedure 1908 in Execution Petition preferred by landlord on the grounds that tenant had paid Rs.1 lacs to the father of landlord; that tenant had renovated the shop from time to time and spent Rs.3,50,000/- in said renovation was undertaken with consent of father of landlord who had agreed to adjust the money so spent; that apart from Rs.3,50,000/- tenant had also spent Rs.1,50,000/-towards labour charges and as such, tenant had invested Rs.5 lacs which deserves to be adjusted against amount of rent payable by tenant to landlord; further that petitioner undertakes to offer her landed property against recovery of arrears of rent; that there is no relationship of tenant and landlord between the parties; and that there was delay in filing appeal or revision and appeal along with application for condonation of delay was pending adjudication before Appellate Authority and without waiting the decision of appeal, filed by tenant, Execution Petition is neither competent nor maintainable and in case

appeal is allowed then it would be difficult for tenant to get back the possession of premises in question from landlord.

10 Learned counsel for tenant has submitted that once certain issues have been raised by tenant by filing objections to Execution Petition, Executing Court/Rent Controller should have framed issue enabling the parties to lead evidence for complete final and proper adjudication of issues raised by tenant and only thereafter, he should have decided the objections in either way.

11 Objections petition preferred by tenant has been dismissed by Rent Controller on the ground that all claims with respect to adjustment of expenditure incurred for renovation of shop by tenant and payment of rent of Rs.1 lacs by tenant to father of landlord were not raised during pendency of eviction petition; and further that all these issues were to be raised before Rent Controller during adjudication of eviction petition and once Eviction Petition has been adjudicated and arrear of rent has been determined, then these issues, though may be agitated in appeal if already raised during adjudication of eviction petition, but certainly not in Execution Petition as Executing Court is bound to follow the decree/final order sought to be executed through it; and further on the ground that tenant had failed to deposit arrears of rent during the period extended by Supreme Court in *Suo Motu Writ Petition No. 3 of 2020* by observing that as per pronouncement of Supreme Court, period from 15.3.2020 to 28.2.2022 shall stand excluded with further period of 90 days granted to comply with orders passed by any Court, but that 90 days time was also over on 30th May, 2022, but tenant had failed to deposit arrears of rent.

12 Learned counsel for landlord has submitted that tenant has filed application under Section 151 CPC as well as Objections under Section 47 of CPC, only in order to delay the Execution Petition whereas for non-deposit of arrears of rent within 30 days after passing the order, tenant is liable to be evicted and reasons assigned for dismissing the application and Objections petition preferred by tenant have been referred by landlord for justifying the impugned order.

13 It has been further contended that in view of pronouncement of Supreme Court in *Madan Mohan vs. Krishan Kumar Sood* reported in 1994 Supp. (1) SCC 437 also, present petition deserves to be dismissed as no Court is authorized to extend the time period granted in the Act itself for saving the tenant from eviction, to deposit the rent/amount due.

14 Section 14(2)(i) of Act provides eviction of tenant for non-payment of arrears of rent with protection to tenant providing that tenant shall not be evicted as a result of order of eviction on the ground of non-payment of rent if tenant pays the amount due within period of 30 days from the date of order. This provision of Act fixes outer limit of payment of rent due so as to avoid eviction by tenant on the ground of non-payment of rent due. Therefore, for limiting period with outer limit of 30 days for payment of rent due, Legislature has intended that in case of non-payment of rent due within a period of 30 days from the date of eviction

order, tenant shall be liable to be evicted from tenanted premises.

15 Undoubtedly, in case of staying of implementation and execution of order of eviction by competent Court before expiry of 30 days, on filing of appropriate proceedings/appeal by tenant, period of 30 days shall have to be counted by extending the time for which stay remains operative. In absence of any stay, for non-deposit of arrears of rent within 30 days, tenant shall be liable to be evicted from tenanted premises.

16 In present case, eviction order was passed on 15.3.2020. 30 days thereafter expired on 14. 4.2020 but due to Covid-19 pandemic there were extra ordinary circumstances and considering those circumstances, the Supreme Court in its order passed in Suo Motu Writ Petition No. 3 of 2020 has excluded the limitation period w.e.f. 15.3.2020 to 28.2.2022 in all proceedings and matters. Period of limitation has also been extended by Supreme Court for further 90 days after 28.2.2022. In present case, tenant deposited the amount/rent due neither within 30 days after passing of order dated 15.3.2020 nor within 30 days after 28th February, 2022 or even within 90 days period after 28.2.2022.

17 No doubt, tenant had offered landed property for attachment against rent/amount due but there is no such provision in Act for accepting and attaching the property of tenant in lieu of condition of deposit of rent due/amount due within 30 days under Section 14(2)(i) of the Act.

18 Undoubtedly, for recovery of rent, property of tenant may be attached and sold but not for recovery or in lieu of deposit of rent due mandated to be deposited within 30 days after passing of eviction order. Further landlord has also not accepted the landed property in lieu of such payment and therefore, Rent Controller has committed no mistake in rejecting the prayer of tenant for attaching the landed property of tenant in lieu of amount due.

19 Property of Judgment Debtor can be attached and sold for realization of decretal amount/rent due but such situation shall come in Execution Petition filed for recovery of amount/rent due but the same cannot be an alternative for deposit of rent/amount due which requires to be deposited within 30 days of passing of eviction order, in an Eviction Petition preferred for eviction for non-payment of rent/amount due.

20 Exemption from eviction on deposit of amount/rent due within 30 days, is altogether different than the proceedings initiated for realization of rent due and a tenant, even after eviction, shall be liable to pay and landlord shall be entitled to recover the amount/rent due determined by Rent Controller by taking appropriate recourse of law but such proceedings for recovery or attachment and sale of property of tenant, in such proceedings, cannot be an alternative in lieu of order of eviction enforceable after 30 days of non-payment of amount due or rent due.

21 Claims with respect to expenditure incurred for renovation and labour charges

amounting to Rs.5 lacs or payment of rent of Rs.1 lac to father of landlord were to be raised in response to eviction petition and in case no such claim has been set up in defence in eviction petition, such plea cannot be raised even in appeal much less in Objections filed during Execution Petition preferred for eviction order. In case such defence has been raised in eviction petition and Rent Controller has failed to respond to that or rejected such plea, then tenant has a right to file an appeal and to raise such issues in appeal as permissible under law. After taking into consideration, material placed before the Appellate Authority may pass an appropriate order including granting interim stay against execution and operation of eviction order, but such exercise is not undertaken by Executing Court. Therefore, plea of tenant that Rent Controller, in Execution Petition, on filing objections under Section 47 of CPC, should have framed issues to adjudicate such points raised by tenant, is not sustainable.

22 After giving thoughtful consideration, contentions of parties, going through material placed on file, in view of above discussion, I find no merit in this petition and accordingly, petition is dismissed along with pending miscellaneous application(s), aif any, and consequently, interim order dated 6.7.2022 also stands vacated.